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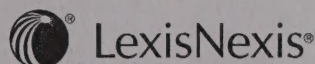
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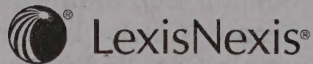
THE STATE OF ARKANSAS

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TITLE 17

PROFESSIONS, OCCUPATIONS, AND BUSINESSES

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SUBTITLE 3. MEDICAL PROFESSIONS

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GENERAL PROVISIONS

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17-80-113. Authorized use of "Doctor" as title.

17-80-121. Unlawful female genital mutilation by a medical professional.

Effective Dates. Acts 2019, No. 556, § 7: Mar. 26, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Centers for Disease Control and Prevention currently estimates that five hundred fifty-one (551) girls or women in Arkansas are at the risk of, or have undergone, female genital mutilation; that female genital mutilation is recognized globally as a human rights violation; and that this legislation is immediately needed to help the women of Arkansas as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 687, § 2: Emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that boards of any profession or occupation classified under the laws of this state as a profession of healing arts often utilize expert witnesses; that the boards are having difficulty finding expert witnesses willing to testify because expert witnesses are not explicitly granted immunity from suit and judgment and may

be subject to lawsuits based on their testimonies or opinions; that the powers of the boards are impaired by the difficulty of finding expert witnesses to testify, which hinders the boards' statutory duty to protect the health and welfare of the citizens of the State of Arkansas; that granting immunity from suit and judgment to expert witnesses testifying or offering opinions, or both, regarding an administrative proceeding before boards is a clarification of the existing law that would help protect the health and welfare of the citizens of the State of Arkansas; and that this act is immediately necessary to ensure the boards can fulfill their statutory duty to protect of health and welfare of the citizens of the State of Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations

of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-80-101. Filing and compilation of licensing information.

(a)(1) The Director of the Arkansas State Medical Board and the Director of the Arkansas State Board of Chiropractic Examiners shall file with the Secretary of State within one (1) week of the issuance of a license:

(A) The name of the person licensed;

(B) The date of license;

(C) The last known post office address of the person licensed; and

(D) Whether the license was granted:

(i) On examination before the Arkansas State Medical Board or the Arkansas State Board of Chiropractic Examiners;

(ii) By reciprocity and, if so, the name of the state which issued the license; or

(iii) On a diploma and, if so, the name of the school or medical college which issued the diploma.

(2) This information shall be verified by the affidavits of the Director of the Arkansas State Medical Board or the Director of the Arkansas State Board of Chiropractic Examiners.

(b) The Secretary of State shall compile the information filed pursuant to subsection (a) of this section in a well-bound book to be kept by him or her for that purpose. He or she shall from time to time, as additional names are filed with him or her by the respective boards, record the names in the book, together with the other information furnished by the boards.

(c) The Secretary of the Department of Health shall report the deaths of all persons licensed by the boards named in subsection (a) of this section to the Secretary of State within a reasonable time after the information has been received in his or her office. The Secretary of State shall thereupon note after the name of the decedent the fact of his or her death and the date thereof.

(d) Any violation of the provisions of this section shall constitute a misdemeanor and be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding ten (10) days.

History. Acts 1935, No. 148, §§ 1-4; Pope's Dig., §§ 10790-10794; A.S.A. 1947, §§ 72-201 — 72-205; Acts 2019, No. 386, § 37; 2019, No. 910, § 4865.

Amendments. The 2019 amendment by No. 386, in (a)(1), substituted "The Executive Director" for "It is the duty of the secretaries", inserted "the Executive

Director of", and substituted "shall" for "to"; substituted "Arkansas State Medical Board or the Arkansas State Board of Chiropractic Examiners" for "board" in (a)(1)(D); and substituted "Executive Director of the Arkansas State Medical Board or the Executive Director of the

Arkansas State Board of Chiropractic Examiners" for "secretaries of the respective boards" in (a)(2).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (c).

17-80-103. Immunity of board members and individuals acting on behalf of boards including expert witnesses.

A member of a board or any individual acting on behalf of the board of any profession or occupation classified under the laws of the State of Arkansas as a profession of the healing arts, including an expert witness testifying or offering opinions, or both, regarding an administrative proceeding before a board of a profession or occupation classified as a profession of the healing arts, is not liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of the board if the board member or the individual acting on behalf of the board, including an expert witness testifying or offering opinions, or both, regarding an administrative proceeding before a board of a profession or occupation classified as a profession of the healing arts, acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which the action is taken or the recommendation is made.

History. Acts 1977, No. 275, § 1; A.S.A. 1947, § 72-143; Acts 1995, No. 1124, § 1; 2019, No. 687, § 1.

Amendments. The 2019 amendment added "and individuals acting on behalf of boards including expert witnesses" to the section heading; inserted "including an

expert witness testifying or offering opinions, or both, regarding an administrative proceeding before a board of a profession or occupation classified as a profession of the healing arts" twice, substituted "A member" for "No member", and substituted "is not" for "shall be".

17-80-104. Continuing education requirements.

(a) The regulatory boards of the professions or occupations classified by the laws of the State of Arkansas as professions of the healing arts and for whom the General Assembly has heretofore established regulatory boards empowered to license persons who practice under conditions of licensure authorized by the General Assembly are authorized to adopt rules requiring the continuing education of the persons licensed by the board.

(b) All rules establishing requirements for continuing education under the provisions of this section shall be adopted in the manner and method set out in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for the adoption of rules.

(c) The regulatory boards shall establish by rule the number of hours of credit and the manner and methods of obtaining the hours of credit by its licensee.

(d) In the event a licensee of the board does not complete the continuing education established by the board under the provisions of this section, the board is empowered to deny renewal of the license held by the licensee or after proper hearing take such action as it considers just and proper to compel compliance with its rules requiring continuing education.

History. Acts 1977, No. 767, §§ 1-3; substituted “rules” for “regulations” in (a), A.S.A. 1947, §§ 6-1401—6-1403; Acts (b), and (d) and made a similar change in 2019, No. 315, § 1500. (c); and deleted “and regulations” at the

Amendments. The 2019 amendment end of (b).

17-80-106. Investigations and inspections of alleged wrongdoing.

(a) The Arkansas State Medical Board, the Arkansas State Board of Dental Examiners, the Arkansas State Board of Nursing, the Veterinary Medical Examining Board, the Arkansas Board of Podiatric Medicine, the State Board of Optometry, and the Arkansas State Board of Physical Therapy are authorized to utilize as their employees, as the investigators for the purposes described in this section, the investigators and inspectors of the Division of Pharmacy Services and Drug Control of the Department of Health.

(b) The Department of Health is directed to make investigators and inspectors of the division available for those purposes and for as long as they may conduct investigations and inspections of alleged wrongdoing of those individuals licensed or permitted by the Arkansas State Medical Board, the Arkansas State Board of Dental Examiners, the Arkansas State Board of Nursing, the Veterinary Medical Examining Board, the Arkansas Board of Podiatric Medicine, the State Board of Optometry, and the Arkansas State Board of Physical Therapy.

(c) Upon written request of a person authorized by the respective licensing board and with authorization by the Director of the Division of Pharmacy Services and Drug Control of the Department of Health pursuant to appropriate authority from the board, the investigators may investigate, inspect, and make copies of medical records, dental records, nursing records, drug orders, prescriptions, veterinary records, and podiatry records, wherever located, of all persons licensed by the medical, optometric, dental, nursing, veterinary, podiatric, and physical therapy boards in order for the respective licensing board to determine whether or not any persons have:

(1) Violated the laws of the State of Arkansas or of the United States respecting the prescribing, administering, and use of narcotics and potentially dangerous drugs;

(2) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

(3) Otherwise violated the practice act or rules of that respective board.

(d) Copies of records, prescriptions, or orders shall not become public records by reason of their use in disciplinary proceedings held by the licensing board, nor shall the patients' or licensed medical professionals' property rights to the prescriptions, orders, or records be extinguished by that use.

(e)(1) The investigators may obtain copies of prescriptions, orders, and records as admissible evidence without the necessity of the issuance of an administrative inspection warrant or search warrant as authorized by § 5-64-502.

(2) However, investigators must have in their possession an authorization by the division.

(3) The licensee may refuse the request of the investigator and not tender copies of the records.

(4)(A) If prescriptions, orders, or records are to be used in criminal proceedings, they shall be obtained by investigators only on an administrative inspection warrant.

(B) No inspection warrant is necessary when prescriptions, orders, or records are to be used solely for board disciplinary purposes.

(f) In lieu of a letter of authority, each of the boards will have the power to issue to the investigators a subpoena to obtain copies of the records referred to in this section, and the investigators will have the authority to serve the subpoena and collect the records.

(g) If a witness served with a subpoena fails to honor the subpoena, the particular board issuing the subpoena may apply to the circuit court for remedies as provided in the Arkansas Rules of Civil Procedure. The court shall have the power to punish the disobedient witness for contempt as is now provided by law in the trial of civil cases.

(h)(1) The division shall have the authority to collect from the individual board utilizing the services delineated in this section up to fifty dollars (\$50.00) per hour with a maximum of four thousand dollars (\$4,000) in hourly costs per case.

(2) The division shall also have the authority to collect from the individual board utilizing the services delineated in this section for:

(A) Travel expenses at the level for state employees; and

(B) Other out-of-pocket costs incurred by the division in carrying out its investigative task.

(i) The Arkansas State Medical Board, the Arkansas State Board of Dental Examiners, the Arkansas State Board of Nursing, the Veterinary Medical Examining Board, the Arkansas Board of Podiatric Medicine, the State Board of Optometry, and the Arkansas State Board of Physical Therapy are authorized to collect costs incurred under subsection (h) of this section from the licensees being investigated by the division.

(j) All funds collected under subsection (h) of this section are declared to be special revenues and shall be deposited into the State Treasury and credited to the Public Health Fund to be used exclusively by the division for investigations conducted under this section.

(k) Subject to rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds collected under this section as certified by the Chief Fiscal Officer of the State to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1993, No. 1146, § 1; 1997, No. 493, § 1; 2001, No. 455, § 1; 2003, No. 1076, § 1; 2005, No. 1410, § 1; 2019, No. 315, §§ 1501, 1502. **Amendments.** The 2019 amendment deleted “and regulations” following “rules” in (c)(3) and (k).

17-80-110. Using “Doctor” as title in documentation.

In any written document or electronically transmitted document in connection with the provision of a healthcare service, no person shall use the title “Doctor”, unless that title is authorized under § 17-1-101 et seq., in which case that person shall use the title in accordance with the statutes and rules governing the particular healthcare profession or unless that person has been granted a doctoral degree in any healing arts profession and is licensed in that profession under § 17-1-101 et seq.

History. Acts 1999, No. 338, § 2; 2019, No. 315, § 1503. **Amendments.** The 2019 amendment substituted “rules” for “regulations”.

17-80-111. Restrictions on “Doctor” as title in advertising.

No person shall advertise or allow oneself to be advertised by the title “Doctor” in association with the practice of one (1) of the healing arts, except in the practice of one (1) of the healthcare professions regulated under § 17-1-101 et seq., in which case that person shall use the title in accordance with the statutes and rules governing the particular healthcare profession or unless that person has been granted a doctoral degree in any healing arts profession and is licensed in that profession under § 17-1-101 et seq.

History. Acts 1999, No. 338, § 3; 2019, No. 315, § 1504. **Amendments.** The 2019 amendment substituted “rules” for “regulations”.

17-80-112. Use of “Doctor” as title in provision of healthcare services.

In connection with the provision of healthcare services, no person shall call oneself or allow oneself to be called by the title “Doctor”, except in the practice of one (1) of the healthcare professions regulated under § 17-1-101 et seq., in which case the person shall use the title in accordance with the statutes and rules governing the particular healthcare profession.

History. Acts 1999, No. 338, § 4; 2019, No. 315, § 1505. **Amendments.** The 2019 amendment substituted “rules” for “regulations”.

17-80-113. Authorized use of “Doctor” as title.

This act shall not be construed to authorize any person to use the title “Doctor”, unless that title is authorized under § 17-1-101 et seq., in which case that person shall use the title in accordance with the statutes and rules governing the particular healthcare profession or unless that person has been granted a doctoral degree in any healing arts profession and is licensed in that profession under § 17-1-101 et seq.

History. Acts 1999, No. 338, § 5; 2019, No. 315, § 1506.

Amendments. The 2019 amendment substituted “rules” for “regulations”.

17-80-121. Unlawful female genital mutilation by a medical professional.

- (a) A state agency, board, or commission authorized to issue a license to a medical professional under the laws of this state shall institute disciplinary action against a licensed medical professional over whom the state agency, board, or commission has jurisdiction and who is convicted of unlawful female genital mutilation of a minor, § 5-14-136.
- (b) The state agency, board, or commission instituting a disciplinary action as described in this section may take any measure authorized to discipline the licensed medical professional, including the revocation of any license.

History. Acts 2019, No. 556, § 5.

SUBCHAPTER 4 — TELEMEDICINE ACT

SECTION.
17-80-402. Definitions.
17-80-403. Establishment of professional relationship.

SECTION.
17-80-404. Appropriate use of telemedicine.

Effective Dates. Acts 2021, No. 829, § 6: Apr. 21, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that due to the coronavirus 2019 (COVID-19) pandemic, the Governor removed barriers to the use of telemedicine in an attempt to combat the coronavirus 2019 (COVID-19) pandemic; that these emergency actions will expire when the emergency proclamation expires, which could occur quickly; that on February 26, 2021, the Governor announced that the public health emergency was extended but that the Governor was going to lift some regulations related to the pandemic; that removing barriers to the use of telemedicine

ensured that the citizens of Arkansas had the services that they needed, and removing these emergency proclamations regarding telemedicine would greatly disadvantage and harm the citizens of Arkansas who are utilizing telemedicine for healthcare services; that this bill maintains the policy changes allowed under the emergency proclamation, which would allow the citizens of Arkansas greater access to the use of telemedicine for healthcare services; and that this act is immediately necessary to ensure that the citizens of Arkansas have access to healthcare services provided via telemedicine. Therefore, an emergency is declared to exist, and this act being immediately nec-

essary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the

expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

17-80-401. Title.

RESEARCH REFERENCES

ALR. Regulation of and Liability Arising from Telemedicine. 23 A.L.R.7th Art. 5 (2017).

17-80-402. Definitions.

As used in this subchapter:

(1) “Distant site” means the location of the healthcare professional delivering services through telemedicine at the time the services are provided;

(2) “Healthcare professional” means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession;

(3)(A) “Originating site” means a site at which a patient is located at the time healthcare services are provided to him or her by means of telemedicine.

(B) “Originating site” includes the home of a patient;

(4) “Professional relationship” means at a minimum a relationship established between a healthcare professional and a patient when:

(A) The healthcare professional has previously conducted an in-person examination of the patient and is available to provide appropriate follow-up care, when necessary, at medically necessary intervals;

(B) The healthcare professional personally knows the patient and the patient’s relevant health status through an ongoing personal or professional relationship and is available to provide appropriate follow-up care, when necessary, at medically necessary intervals;

(C) The treatment is provided by a healthcare professional in consultation with, or upon referral by, another healthcare professional who has an ongoing professional relationship with the patient and who has agreed to supervise the patient’s treatment, including follow-up care;

(D) An on-call or cross-coverage arrangement exists with the patient’s regular treating healthcare professional or another healthcare professional who has established a professional relationship with the patient;

(E)(i) A relationship exists in other circumstances as defined by rule of the Arkansas State Medical Board for healthcare professionals under its jurisdiction and their patients.

(ii) A relationship established under rules of the Arkansas State Medical Board may be utilized for telehealth certification;

(F) A relationship exists in other circumstances as defined by rule of a licensing or certification board for other healthcare professionals under the jurisdiction of the appropriate board and their patients if the rules are no less restrictive than the rules of the Arkansas State Medical Board; or

(G)(i) The healthcare professional who is licensed in Arkansas has access to a patient's personal health record maintained by a healthcare professional and uses any technology deemed appropriate by the healthcare professional, including the telephone, with a patient located in Arkansas to diagnose, treat, and if clinically appropriate, prescribe a noncontrolled drug to the patient.

(ii) For purposes of this subchapter, a health record may be created with the use of telemedicine and consists of relevant clinical information required to treat a patient, and is reviewed by the healthcare professional who meets the same standard of care for a telemedicine visit as an in-person visit;

(5) "Remote patient monitoring" means the use of synchronous or asynchronous electronic information and communication technology to collect personal health information and medical data from a patient at an originating site that is transmitted to a healthcare professional at a distant site for use in the treatment and management of medical conditions that require frequent monitoring;

(6) "Store-and-forward technology" means the asynchronous transmission of a patient's medical information from a healthcare professional at an originating site to a healthcare professional at a distant site;

(7) "Telehealth certification" means the electronic assessment of a patient by a practitioner in connection with an application for a registry identification card under § 5 of the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98; and

(8)(A) "Telemedicine" means the use of electronic information and communication technology to deliver healthcare services, including without limitation the assessment, diagnosis, consultation, treatment, education, care management, and self-management of a patient.

(B) "Telemedicine" includes store-and-forward technology and remote patient monitoring.

(C) "Telemedicine" does not include the use of audio-only electronic technology by a physician to renew a written certification that was previously issued to the same patient.

History. Acts 2017, No. 203, § 2; 2021, No. 767, § 1; 2021, No. 829, § 1; 2021, No. 1112, §§ 1-3.

Amendments. The 2021 amendment by No. 767 redesignated (3) as (3)(A); and added (3)(B).

The 2021 amendment by No. 829 inserted “of the patient” in (4)(A); inserted

“professional” preceding “relationship” in (4)(C); added (4)(G); and made a stylistic change.

The 2021 amendment by No. 1112 redesignated (4)(E) as (4)(E)(i) and added (4)(E)(ii); added (7)(C); and added the definition for “Telehealth certification”.

17-80-403. Establishment of professional relationship.

(a)(1) A healthcare professional at a distant site shall not utilize telemedicine with respect to a patient located in Arkansas unless a professional relationship exists between the healthcare professional and the patient or the healthcare professional otherwise meets the requirements of a professional relationship as defined in § 17-80-402.

(2) The existence of a professional relationship is not required in the following circumstances:

(A) Emergency situations where the life or health of the patient is in danger or imminent danger; or

(B) Simply providing information of a generic nature, not meant to be specific to an individual patient.

(b) If the establishment of the professional relationship is permitted via telemedicine under § 17-80-402(4)(E) or § 17-80-402(4)(F), telemedicine may be used to establish the professional relationship only for situations in which the standard of care does not require an in-person encounter.

(c) “Professional relationship” does not include a relationship between a healthcare professional and a patient established only by the following:

(1) An internet questionnaire;

(2) An email message;

(3) Patient-generated medical history;

(4) Text messaging;

(5) A facsimile machine; or

(6) Any combination of means listed in subdivisions (c)(1)-(5) of this section.

History. Acts 2017, No. 203, § 2; 2021, No. 829, § 2.

Amendments. The 2021 amendment deleted former (c)(4) and redesignated the

remaining subdivisions accordingly; and substituted “of means listed in subdivisions (1)-(5) of this section” for “thereof” in (c)(6).

17-80-404. Appropriate use of telemedicine.

(a)(1) A professional relationship shall be established in compliance with § 17-80-403 to provide healthcare services through telemedicine.

(2) Once a professional relationship is established, a healthcare professional may provide healthcare services through telemedicine, including interactive audio, if the healthcare services are within the scope of practice for which the healthcare professional is licensed or

certified and the healthcare services otherwise meet the requirements of this subchapter.

(3) A licensing or certification board shall not permit the use of telemedicine in a manner that is less restrictive than the use of telemedicine authorized by the Arkansas State Medical Board.

(b)(1) Regardless of whether the healthcare professional is compensated for the healthcare services, if a healthcare professional seeks to provide healthcare services to a minor through telemedicine in a school setting and the minor is enrolled in the Arkansas Medicaid Program, the healthcare professional shall:

(A) Be the designated primary care provider of the minor;

(B) Have a cross-coverage arrangement with the designated primary care provider of the minor; or

(C) Have authorization from the designated primary care provider of the minor.

(2) If the minor does not have a designated primary care provider, subdivision (b)(1) of this section does not apply.

(3) If a minor is enrolled in a health benefit plan as defined in § 23-79-1601 that is not part of the Arkansas Medicaid Program, the terms and conditions of the health benefit plan shall control.

(4) The designation of a primary care provider for a minor remains the right of a parent or legal guardian in accordance with § 20-9-601 et seq.

(c) Healthcare services provided by telemedicine, including without limitation a prescription through telemedicine, shall be held to the same standard of care as healthcare services provided in person.

(d)(1) A healthcare professional who is treating patients in Arkansas through telemedicine shall be fully licensed or certified to practice in Arkansas and is subject to the rules of the appropriate state licensing or certification board.

(2) The requirement in subdivision (d)(1) of this section does not apply to the acts of a healthcare professional located in another jurisdiction who provides only episodic consultation services.

(e) A healthcare professional shall follow applicable state and federal law, rules, and regulations for:

(1) Informed consent;

(2) Privacy of individually identifiable health information;

(3) Medical recordkeeping and confidentiality; and

(4) Fraud and abuse.

(f)(1) A healthcare professional may use telemedicine to perform group meetings for healthcare services, including group therapy.

(2) Telemedicine for group therapy provided to adults who are participants in a program or plan authorized and funded under 42 U.S.C. § 1396a, as approved by the United States Secretary of Health and Human Services, may only be permitted if the Centers for Medicare & Medicaid Services allows telemedicine for group therapy provided to adults.

(3) Telemedicine shall not be used for group therapy provided to a child who is eighteen (18) years of age or younger.

History. Acts 2017, No. 203, § 2; 2021, No. 767, § 2.

Amendments. The 2021 amendment added (f).

17-80-405. Liability — Noncompliance.

RESEARCH REFERENCES

ALR. Regulation of and Liability Arising from Telemedicine. 23 A.L.R. 7th Art. 5 (2017).

SUBCHAPTER 5 — MEDICAL ETHICS AND DIVERSITY ACT

SECTION.

17-80-501. Title.

17-80-502. Legislative findings and purpose.

17-80-503. Definitions.

SECTION.

17-80-504. Right of conscience.

17-80-505. Civil remedies.

17-80-506. Applicability.

17-80-501. Title.

This subchapter shall be known and may be cited as the “Medical Ethics and Diversity Act”.

History. Acts 2021, No. 462, § 1.

17-80-502. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) The right of conscience is a fundamental and unalienable right;

(2) The right of conscience was central to the founding of the United States, has been deeply rooted in the history and tradition of the United States for centuries, and has been central to the practice of medicine through the Hippocratic oath for millennia;

(3) Despite its importance, threats to the right of conscience of medical practitioners, healthcare institutions, and healthcare payers have become increasingly more common and severe in recent years;

(4) The swift pace of scientific advancement and the expansion of medical capabilities, along with the notion that medical practitioners, healthcare institutions, and healthcare payers are mere public utilities, promise only to exacerbate the current crisis unless something is done to restore the importance of the right of conscience; and

(5) It is the public policy of this state to protect the right of conscience of medical practitioners, healthcare institutions, and healthcare payers.

(b) It is the purpose of this subchapter to protect all medical practitioners, healthcare institutions, and healthcare payers from discrimination, punishment, or retaliation as a result of any instance of conscientious medical objection.

History. Acts 2021, No. 462, § 1.

17-80-503. Definitions.

As used in this subchapter:

(1)(A) "Conscience" means the religious, moral, or ethical beliefs or principles of a medical practitioner, healthcare institution, or healthcare payer.

(B) "Conscience" of an institutional entity or corporate body may be determined by reference to existing or proposed documents, including without limitation any published religious, moral, or ethical guidelines or directives, mission statements, constitutions, by-laws, articles of incorporation, policies, regulations, or other relevant documents;

(2)(A) "Discriminate" means to take an adverse action against, or communicate a threat of adverse action to, any medical practitioner, healthcare institution, or healthcare payer as a result of a decision by a medical practitioner, healthcare institution, or healthcare payer to decline to participate in a healthcare service on the basis of the conscience of the medical practitioner, healthcare institution, or healthcare payer, including without limitation:

- (i) Termination;
- (ii) Refusal of staff privileges;
- (iii) Refusal of board certification;
- (iv) Adverse administrative or disciplinary action;
- (v) Demotion;
- (vi) Loss of career specialty;
- (vii) Reduction of wages, benefits, or privileges;
- (viii) Refusal to award any grant, contract, or other program;
- (ix) Refusal to provide residency training opportunities;
- (x) Refusal to authorize the creation, expansion, improvement, acquisition, affiliation, or merger of a healthcare institution;
- (xi) Reassignment to a different shift or job title;
- (xii) Addition or increase of administrative duties;
- (xiii) Denial, deprivation, or disqualification of licensure;
- (xiv) Disqualification from or withholding of financial aid or other financial assistance; and
- (xv) Any other penalty or disciplinary retaliatory action, whether executed or threatened.

(B) "Discrimination" does not include the negotiation or purchase of insurance by a nongovernment entity;

(3) "Healthcare institution" means a public or private organization, corporation, partnership, sole proprietorship, association, agency, network, joint venture, or other entity involved in providing healthcare services, including without limitation:

- (A) A hospital;
- (B) A clinic;
- (C) A medical center;
- (D) An ambulatory surgical center;
- (E) A private physician's office;

- (F) A pharmacy;
- (G) A nursing home;
- (H) A medical training facility;

(I) An individual, association, corporation, or other entity attempting to establish a new healthcare institution or operating an existing healthcare institution; and

(J) Any other institution or location where healthcare services are provided to an individual;

(4) "Healthcare payer" means an employer, health plan, health maintenance organization, insurance company, management services organization, or any other entity that pays for or arranges for the payment of any healthcare service provided to a patient, whether the payment is made in whole or in part;

(5) "Healthcare service" means medical care provided to a patient at any time over the entire course of treatment, including without limitation:

- (A) Initial examination;
- (B) Patient referral;
- (C) Counseling or psychological therapy;
- (D) Therapy;
- (E) Testing;
- (F) Research;
- (G) Diagnosis or prognosis;
- (H) Instruction;

(I) Dispensing or administering, or both, of any drug, medication, or device;

(J) Set up or performance of a surgery or other procedure;

(K) Recordkeeping and recordmaking procedures and notes related to treatment; and

(L) Other care or services provided by a medical practitioner or healthcare institution;

(6) "Medical practitioner" means an individual who is:

- (A) A physician;
- (B) A physician assistant;
- (C) An advanced practice registered nurse or other nurse practitioner;

(D) A pharmacist;

(E) A medical researcher or laboratory technician to the extent that he or she is requested to actively and materially participate in medical research or testing that violates his or her conscience;

(F) A counselor, social worker, psychologist, or other mental health professional to the extent that he or she is requested to actively and materially provide or participate in a type of counseling or referral for a healthcare service that violates his or her conscience;

(G) A student of counseling, psychology, social work, or other mental health studies to the extent that he or she is asked to actively and materially participate in a type of counseling or referral for a healthcare service that violates his or her conscience; or

(H) A nurse, pharmacy technician, surgical technician, allied health professional, student, faculty member, contractor, or employee who is requested to actively and materially participate in a surgery, procedure, or medication administration or dispensing that violates his or her conscience; and

(7) "Participate" means to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing any healthcare service or any form of healthcare service.

History. Acts 2021, No. 462, § 1.

17-80-504. Right of conscience.

(a) A medical practitioner, healthcare institution, or healthcare payer:

(1) Has the right not to participate in a healthcare service that violates his, her, or its conscience;

(2) Is not required to participate in a healthcare service that violates his, her, or its conscience;

(3) Is not civilly, criminally, or administratively liable for declining to participate in a healthcare service that violates his, her, or its conscience;

(4) Is not civilly, criminally, or administratively liable for the exercise of conscience rights not to participate in a healthcare service by a medical practitioner employed, contracted, or granted admitting privileges by a healthcare institution; and

(5) Shall not be discriminated against in any manner based upon his, her, or its declining to participate in a healthcare service that violates his, her, or its conscience.

(b) Exercise of the right of conscience is limited to conscience-based objections to a particular healthcare service.

(c) A medical practitioner, healthcare institution, or healthcare payer that holds himself, herself, or itself out to the public as religious, states in its governing documents that it has a religious purpose or mission, and has internal operating policies or procedures that implement its religious beliefs has the right to make employment, staffing, contracting, and admitting privilege decisions consistent with his, her, or its religious beliefs.

(d) The right of conscience described in subsection (a) of this section does not include the right to deny emergency medical care as required under 42 U.S.C. § 1395dd, as existing on January 1, 2021, or any other federal law governing emergency medical treatment, as existing on January 1, 2021.

(e)(1) When a medical practitioner declines to participate in a healthcare service for reasons of conscience, the medical practitioner shall alert the employing healthcare institution at the earliest reasonable time and comply with any applicable protocol developed under this section.

(2)(A) A healthcare institution may develop a protocol for situations in which a medical practitioner declines to participate in a healthcare service.

(B) The protocol shall provide for prompt patient access to medical records to facilitate transfer, if needed.

(3) This section does not require a healthcare institution or medical practitioner to perform a healthcare service, counsel, or refer a patient regarding a healthcare service that is contrary to the conscience of the medical practitioner or healthcare institution.

(f)(1) This section does not prohibit an employer or contracting healthcare institution from disclosing the specific healthcare services that an applicant would be required to participate in if he or she is hired for the position or contract.

(2) Upon being informed of the specific healthcare services required of the position or contract, the applicant shall disclose whether he, she, or it has a conscience objection to any of those required duties.

(3) However, a medical practitioner or healthcare institution shall be able to decline to participate in a healthcare service that violates his, her, or its conscience if the employer or contracting healthcare institution, after employment, adds healthcare services to a medical practitioner's or healthcare institution's duties that would require the medical practitioner or healthcare institution to provide services that violate his, her, or its conscience.

(g)(1) A healthcare payer shall file its conscience policies annually with the State Insurance Department by including a comprehensive list by billing code of any and all products, services, and procedures that the healthcare payer shall not pay or make payment for reasons of conscience.

(2) The annual filing described in subdivision (g)(1) of this section shall:

(A) Be provided annually to each beneficiary of the healthcare payer and on the website of the healthcare payer; and

(B) Not be required for any year in which the healthcare payer will not exercise its conscience rights under this subchapter.

(h) A healthcare payer shall not use a conscience objection to refuse or reduce payments to a healthcare provider, healthcare institution, or beneficiary for any product, service, or procedure that is not included in the annual filing required under subdivision (g)(1) of this section.

(i) A healthcare payer shall not compel by undue influence, fraud, or duress a healthcare provider, healthcare institution, or beneficiary to accept a contract or contract amendment that violates the conscience of the healthcare provider, healthcare institution, or beneficiary.

(j) The department may issue rules and take any other action necessary or appropriate to enforce subsections (g)-(i) of this section.

17-80-505. Civil remedies.

(a)(1) A civil action for damages or injunctive relief, or both, may be brought by a medical practitioner, healthcare institution, or healthcare payer for a violation of this subchapter.

(2) A claim that the violation of this subchapter was necessary to prevent an additional burden or expense on another medical practitioner, healthcare institution, healthcare payer, or individual, including without limitation a patient, is not an affirmative defense.

(b)(1)(A) Upon a finding of a violation of this subchapter, the aggrieved party shall be entitled to recover three (3) times the amount of any damages incurred, including without limitation damages related to:

- (i) The cost of the civil action; and
- (ii) Reasonable attorney's fees.

(B) The total amount of damages shall not be less than five thousand dollars (\$5,000) for each violation in addition to the costs of the civil action and reasonable attorney's fees.

(2) Damages shall be cumulative and are not exclusive of other remedies that may be afforded under state or federal law.

(c) A court may award injunctive relief, including without limitation ordering the reinstatement of a medical practitioner to his or her prior employment position or board certification or relicensure of a healthcare institution or healthcare payer.

History. Acts 2021, No. 462, § 1.

17-80-506. Applicability.

This subchapter is supplemental to existing protections of the right of conscience within the Arkansas Code and does not affect the existing laws within the state concerning protection of the right of conscience.

History. Acts 2021, No. 462, § 1.

CHAPTER 81
CHIROPRACTORS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS STATE BOARD OF CHIROPRACTIC EXAMINERS.
- 3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-81-106. Health and police rules applicable.

SECTION.

17-81-107. Use of a procurer — Definitions.

17-81-106. Health and police rules applicable.

Chiropractic physicians licensed under this chapter shall be:

- (1) Bound by all applicable health and police rules of the state; and
- (2) Qualified to sign death certificates, insurance certificates, and all other certificates pertaining to public health with like effect as other licensed physicians.

History. Acts 1971, No. 706, § 19; A.S.A. 1947, § 72-433; Acts 2019, No. 315, § 1507; 2021, No. 589, § 2.

Amendments. The 2019 amendment substituted “rules” for “regulations” in the section heading and in the first sentence.

The 2021 amendment designated former provisions as (1) and (2); in the introductory language, substituted “physicians” for “practitioners”; and made stylistic changes.

17-81-107. Use of a procurer — Definitions.

(a) As used in this section:

(1)(A) “Procurer” means a person or entity who for pecuniary benefit procures or attempts to procure a client, patient, or customer by directly contacting the client, patient, or customer in person, by telephone, or by electronic means at the direction of, request of, employment of, or in cooperation with a chiropractic physician.

(B) “Procurer” does not include a provider or a person that procures or attempts to procure a client, patient, or customer for a provider through public media or a person that refers a client, patient, or customer to a provider as otherwise authorized by law; and

(2) “Public media” means telephone directories, professional directories, newspapers and other periodicals, radio and television, billboards, and mailed or electronically transmitted written or visual communications that do not involve in-person or direct contact with specific prospective clients, patients, or customers.

(b)(1) A chiropractic physician who uses a procurer is required to:

(A) Have a written contract with the procurer or procurement company with whom the chiropractic physician engages; and

(B) Register the name of any procurer with whom the chiropractic physician contracts with the Arkansas State Board of Chiropractic Examiners.

(2) A chiropractic physician shall register a procurer with the board by filing the following information with the board on a form approved by the board:

(A) The full legal name of the procurer with whom the chiropractic physician has a current contract and engages;

(B) A valid state-issued photo identification or driver’s license, or both;

(C) The procurer’s permanent home address;

(D) The procurer’s business telephone number solely used for client communication purposes; and

(E) The name, telephone number, and address of the chiropractic physician engaging the procurer.

(3) The chiropractic physician shall provide the board with updated procurer registration information, should any of the information required under subdivision (b)(2) of this section change during the year.

(4)(A) The procurer registration expires on December 31 of each year.

(B) If a chiropractic physician engages a procurer, the chiropractic physician shall register the procurer annually.

(c) A violation of this section shall result in the following:

(1) Any payments paid by, or on behalf of, an individual named in a motor vehicle accident report for medical services provided by the chiropractic physician to the individual named in a motor vehicle accident report shall be returned to the individual, insurance company, or other payor; and

(2) The prohibition of a chiropractic physician from attempting to collect fees for medical services from an individual named in a motor vehicle accident report.

(d) A procurer operating in this state shall:

(1) Develop a telephone solicitation training program for all employees or authorized representatives of the procurer;

(2) Develop and maintain a solicitation script for use by all employees and authorized representatives of the procurer;

(3)(A) Make and keep accounts, correspondence, memoranda, papers, books, and other records for a period of at least five (5) years.

(B) The records described in subdivision (d)(3)(A) of this section shall include:

(i) The names and telephone numbers of individuals solicited;

(ii) The name of the chiropractic physician with whom the procurer has contracted as required under subsection (b) of this section;

(iii) If solicitation with an individual is initiated due to a motor vehicle accident, then the date and time of the motor vehicle accident;

(iv) The amount of compensation paid to a procurer for the solicitation of each actual or potential patient, customer, or client; and

(v) Any moneys shared by the procurer with other persons for conducting work as a procurer;

(4) Maintain a log of all training programs required under subdivision (d)(1) of this section that are provided to a procurer and the employees or authorized representatives of the procurer that includes:

(A) The curriculum of any training program;

(B) The dates upon which any training program is provided; and

(C) The signature of each individual participating in the training program and acknowledgment that he or she has completed the training program and agrees to perform the work of solicitation according to the training program; and

(5) Maintain all solicitations, advertisements, and advertising materials used by the procurer in soliciting clients for the services of a chiropractic physician.

(e) It is unlawful for a procurer to transact business in this state if the procurer has not met the contract and registration requirements under subsection (b) of this section.

- (f) The board may adopt rules to implement this section.
- (g)(1) A chiropractic physician convicted of a Class D felony under § 5-37-505 or § 5-37-506 is subject to mandatory license revocation.
- (2) A procurer convicted of a Class D felony under § 5-37-505 or § 5-37-506 is disqualified from transacting business in this state as a procurer under this subchapter.
- (h) A violation of this section is a deceptive and unconscionable trade practice under § 4-88-107 and is subject to the penalties, remedies, and enforcement provisions under the Deceptive Trade Practices Act, § 4-88-101 et seq.

History. Acts 2013, No. 513, § 3; 2021, No. 589, §§ 3, 4.
Amendments. The 2021 amendment redesignated former (b) as (b)(1) and for-

mer (b)(1) and (b)(2) as (b)(1)(A) and (b)(1)(B); and added (b)(2) through (b)(4), and (c) through (h).

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF CHIROPRACTIC EXAMINERS

SECTION.

- 17-81-204. Organization — Meetings.
- 17-81-205. Minutes — Records.
- 17-81-206. Duties and powers.

SECTION.

- 17-81-207. Director.
- 17-81-208. Disposition of funds.
- 17-81-209. Preceptorship program.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-81-204. Organization — Meetings.

- (a) The Department of Health shall maintain and operate an office for the administration of the business of the Arkansas State Board of Chiropractic Examiners.
- (b) It shall meet in July of each year and from its members elect a president, secretary, and treasurer. The officers so elected shall hold office for a period of one (1) year or until their successors are elected and have qualified.
- (c)(1) It shall be the duty of the board to meet regularly one (1) time in every six (6) months for the purpose of conducting the business of the board.

(2) Special meetings of the board may be called at any time at the pleasure of the President of the Arkansas State Board of Chiropractic Examiners or by the Secretary of the Arkansas State Board of Chiropractic Examiners on the request of any two (2) members of the board.

(3) Four (4) members shall constitute a quorum at any meeting of the board.

(d) The board shall determine by its own rules the time and manner of giving notice to its members.

(e) Any action of the board, except the issuance of temporary licenses, shall require an affirmative vote of a majority of the full membership of the board.

History. Acts 1971, No. 706, §§ 6, 7; 1981, No. 51, § 3; A.S.A. 1947, §§ 72-420, 72-421; Acts 1987, No. 354, § 3; 1989 (3rd Ex. Sess.), No. 30, § 2; 2019, No. 910, § 4866.

in (a), substituted "Department of Health" for "Arkansas State Board of Chiropractic Examiners" near the beginning, and substituted "the business of the Arkansas State Board of Chiropractic Examiners" for "its business" at the end.

Amendments. The 2019 amendment,

17-81-205. Minutes — Records.

(a) The Director of the Arkansas State Board of Chiropractic Examiners shall keep a record of the minutes of the meetings of the Arkansas State Board of Chiropractic Examiners and a record of the names of all persons making application for license under the provisions of this chapter together with a record of the action of the board thereon.

(b) The director shall also keep a roll of the names of all licensed and deceased chiropractors who have been licensed to practice in the State of Arkansas.

(c) The record shall at all reasonable times be open for public inspection.

History. Acts 1971, No. 706, § 8; A.S.A. 1947, § 72-422; Acts 1999, No. 1553, § 3; 2019, No. 910, § 4867.

deleted "Executive" preceding "Director" in (a), and deleted "executive" preceding "director" in (b).

Amendments. The 2019 amendment

17-81-206. Duties and powers.

(a)(1) The Arkansas State Board of Chiropractic Examiners is empowered to incur whatever expenses the board may deem necessary or expedient in performing its functions.

(2) Each member of the board may receive expense reimbursement and stipends in accordance with §§ 25-16-901, 25-16-902, and 25-16-904 — 25-16-908.

(3) All of the disbursements provided for in this section shall be out of the fees and fines collected by the board.

(b) The board is authorized to:

(1) Promulgate suitable rules for carrying out its duties under the provisions of this chapter;

(2) Sue and be sued;

(3) Have an official seal which shall bear the words “Arkansas State Board of Chiropractic Examiners”;

(4) Provide a Secretary of the Arkansas State Board of Chiropractic Examiners’ certificate. The certificate of the secretary of the board under seal shall be accepted in the courts of the state as the best evidence as to the minutes of the board and shall likewise be accepted in the courts of the state as the best evidence as to the registration and nonregistration of any person under the requirements of this chapter;

(5) Adopt and, from time to time, revise such rules not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this chapter;

(6) Cause the prosecution of all persons violating this chapter and have power to incur necessary expenses therefor;

(7) Keep a record of all its proceedings;

(8) Employ a Director of the Arkansas State Board of Chiropractic Examiners, in consultation with the Secretary of the Department of Health, as may be necessary to carry out the work of the board, who shall have their duties and compensation prescribed by the board within appropriations for that purpose;

(9) Examine, license, and renew the licenses of duly qualified applicants. The board shall have exclusive jurisdiction to determine who shall be permitted to practice chiropractic in the State of Arkansas; and

(10) Conduct disciplinary proceedings as provided in this chapter.

(c)(1) In the performance of its duties, the board may issue subpoenas for the purpose of examining into any facts or conditions properly pending before the board for action, including without limitation persons, records, or documents.

(2) All subpoenas issued by the board shall be served in the manner prescribed by law for the service of subpoenas issuing from the courts, and all persons so served shall obey the subpoenas or be subject to the penalties provided by law for the disobedience of subpoenas issuing from the courts.

(3) All persons subpoenaed by the board are entitled to their pay and mileage and shall have all the other rights now provided by law for persons served with subpoenas issuing from the courts.

History. Acts 1971, No. 706, §§ 6, 9; 1977, No. 199, § 3; 1981, No. 51, § 2; 1983, No. 504, § 1; A.S.A. 1947, §§ 72-420, 72-423; Acts 1987, No. 354, § 2; 1997, No. 250, § 154; 1999, No. 1553, § 4; 2017, No. 397, §§ 2, 3; 2019, No. 315, §§ 1508, 1509; 2019, No. 910, §§ 4868, 4869.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b)(1) and (b)(5).

The 2019 amendment by No. 910, in (a)(1), substituted “the board may deem”

for “it may deem” and deleted the last sentence, which formerly read: “It may employ whatever assistants it may deem necessary or expedient therefor and fix their compensation”; and substituted “Employ a Director of the Arkansas State Board of Chiropractic Examiners, in consultation with the Secretary of the Department of Health” for “Employ such persons” in (8).

17-81-207. Director.

(a) Pursuant to its authority set forth in § 17-81-206(b)(8), the Arkansas State Board of Chiropractic Examiners of the Department of Health may employ a Director of the Arkansas State Board of Chiropractic Examiners.

(b)(1) The director in consultation with and review of the Treasurer of the Arkansas State Board of Chiropractic Examiners shall collect all fees and fines on behalf of the board and submit all payment requests on behalf of the board for its state appropriations.

(2) The director shall give in writing at the annual meeting of the board a fully itemized report of his or her receipts and disbursements for the preceding year showing the amount of money on hand and shall submit reports for inspection at other times as may be requested by the board or by any of its members.

(3) Copies of the annual reports, actions of the board, and number licensed for the year, certified by the Secretary of the Arkansas State Board of Chiropractic Examiners, shall be submitted by the director to the various chiropractic professional organizations in Arkansas and the Secretary of the Department of Health.

History. Acts 1971, No. 706, § 25; A.S.A. 1947, § 72-439; Acts 1999, No. 1553, § 5; 2017, No. 397, § 4; 2019, No. 910, § 4870.

Amendments. The 2019 amendment substituted “Director” for “Executive director” in the section heading; substituted “employ a Director of the Arkansas State Board of Chiropractic Examiners” for “employ an executive director to maintain and operate its office pursuant to its direc-

tions” in (a); and, in (b), substituted “The director” for “The Executive Director of the Arkansas State Board of Chiropractic Examiners” and substituted “Arkansas State Board of Chiropractic Examiners” for “board” in (1), deleted “executive” preceding “director” in (2), and in (3), deleted “of the board” following “Examiners”, deleted “executive” preceding “director”, and added “and the Secretary of the Department of Health”.

17-81-208. Disposition of funds.

(a) All fees and fines authorized by this chapter are the property of the Arkansas State Board of Chiropractic Examiners and shall be paid to the office of the Director of the Arkansas State Board of Chiropractic Examiners who shall collect and dispose of such funds on behalf of the board as provided in this chapter. Any surplus in the treasury of the board at the end of the fiscal year shall remain in the treasury and may be expended in succeeding years for the purposes herein set out.

(b) All funds received by the board shall be expended in the furtherance of the purposes of this chapter and the board’s duties thereunder, which include, but are not limited to:

(1) The publication and distribution of the Arkansas Chiropractic Practices Act, § 17-81-101 et seq.;

(2) The publication and yearly distribution of a directory of all licensed chiropractic practitioners;

(3) Investigations of violations of this chapter;

(4) Institution of actions to compel compliance with the provisions of this chapter; and

(5) Defense of actions brought against it as a result of its actions under the provisions of this chapter.

History. Acts 1971, No. 706, § 18; A.S.A. 1947, § 72-432; Acts 1999, No. 1553, § 6; 2019, No. 910, § 4871.

Amendments. The 2019 amendment deleted “Executive” preceding “Director” in (a).

17-81-209. Preceptorship program.

(a)(1) The Arkansas State Board of Chiropractic Examiners may authorize a chiropractic student preceptorship program established by an approved chiropractic college to allow a student in the final clinical phase of chiropractic training to practice under the direct, on-site supervision of a chiropractor licensed in this state.

(2) A student from a chiropractic college accredited by the Council on Chiropractic Education is eligible for a chiropractic student preceptorship program.

(b) The board shall establish by rule the standards for the:

(1) Approval of a chiropractic student preceptorship program established by an approved chiropractic college;

(2) Eligibility of a chiropractic student to be admitted to a chiropractic student preceptorship program;

(3)(A) Application process for a chiropractic student to be enrolled in a chiropractic student preceptorship program.

(B) The application process may include an application fee as determined by the board;

(4) Activities, duties, and scope of practice restrictions of a chiropractic student in a chiropractic student preceptorship program; and

(5) Identification of a chiropractic student in a chiropractic student preceptorship program.

(c) A chiropractic student preceptorship program is not considered approved by the board until the chiropractic college that has applied to establish a chiropractic student preceptorship program receives a written letter of approval from the board.

(d) All activities and duties performed by a chiropractic student in a chiropractic student preceptorship program shall be under the direct, on-site supervision of a chiropractor.

History. Acts 2019, No. 645, § 1.

SUBCHAPTER 3 — LICENSING

SECTION.

17-81-303. Unlawful practice — Penalty
— Injunction.

17-81-304. Application — Fees.

SECTION.

17-81-305. Qualifications of applicants.

17-81-318. Criminal background check.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-81-303. Unlawful practice — Penalty — Injunction.

(a) Any person who practices or attempts to practice chiropractic, as defined in this chapter, or use any sign, card, or device to indicate that the person is a professional licensed doctor of chiropractic without having first been licensed or otherwise permitted under the provisions of this chapter to do so shall be guilty of a misdemeanor. Upon conviction, he or she shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or by imprisonment in the county jail for a period of not less than one (1) month nor more than eleven (11) months, or by both fine and imprisonment. Each day shall constitute a separate offense.

(b) The courts of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of chiropractic in a proceeding by the Arkansas State Board of Chiropractic Examiners or any member thereof, by any citizen of this state in the county in which the alleged unlawful practice occurred or in which the defendant resides, or in Pulaski County. The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this chapter, but the remedy of injunction shall be in addition to liability to criminal prosecution.

(c)(1) It is unlawful for any person other than a physician licensed to practice chiropractic under the provisions of the Arkansas Chiropractic Practices Act, § 17-81-101 et seq., or a physician licensed to practice medicine under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., to perform spinal mobilizations, spinal adjustments, or spinal manipulations as those terms are defined in § 17-81-102.

(2) Nothing contained in this subsection shall be construed to limit or restrict the authority of a licensed physical therapist to practice physical therapy as defined in § 17-93-102(7).

(3) Any person violating the provisions of this subsection shall be guilty of a violation and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000), and each violation shall constitute a separate offense.

(d)(1) If the board determines after due notice and a hearing that any provision of this chapter or any rule promulgated by the board pursuant

to this chapter has been violated, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) per violation.

(2)(A) The board may file an action in Pulaski County Circuit Court to collect any civil penalty not paid within thirty (30) days of service of the order assessing the penalty unless the circuit court enters a stay of the board's order.

(B) If the board prevails in the action, the defendant shall be directed to pay reasonable attorney's fees and costs incurred by the board in prosecuting the action in addition to the civil penalty.

(3) Any person aggrieved by an action of the board imposing civil penalties may appeal the decision in the manner and under the procedure prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for appeals from administrative decisions.

History. Acts 1971, No. 706, §§ 2, 14, 22; A.S.A. 1947, §§ 72-416, 72-428, 72-436; Acts 1987, No. 50, §§ 1, 2; 1987, No. 354, § 9; 1991, No. 983, §§ 1, 2; 2001, No. 197, §§ 2, 3; 2005, No. 1994, § 479; 2019, No. 315, § 1510.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (d)(1).

17-81-304. Application — Fees.

(a)(1)(A) Applications for a license to practice chiropractic in the State of Arkansas shall be made to the Director of the Arkansas State Board of Chiropractic Examiners in writing on forms furnished by the Arkansas State Board of Chiropractic Examiners.

(B) The application shall be signed by the applicant in his or her own handwriting and acknowledged before an officer authorized to administer oaths.

(2) The applicant must submit proof satisfactory to the board of graduation from a chartered school or college of chiropractic as herein described and file with his or her application the affidavits of at least two (2) licensed and reputable doctors of chiropractic.

(3) The application shall be accompanied by the payment of one hundred fifty dollars (\$150), and fifty dollars (\$50.00) for an orientation fee.

(4) The application shall be filed with the director not less than forty-five (45) days before the next regular meeting of the board.

(b) If the applicant is approved, no part of the fee shall be returned, and he or she shall be issued a license to practice chiropractic in accordance with the provisions of this chapter.

(c) If the applicant is not approved, he or she shall be notified of the reasons for the disapproval.

History. Acts 1971, No. 706, § 9; 1977, No. 199, § 3; 1983, No. 504, § 1; A.S.A. 1947, § 72-423; Acts 1987, No. 354, §§ 4, 5; 1999, No. 1553, § 8; 2016, No. 200, § 4; 2019, No. 910, § 4872; 2019, No. 990, § 59.

Amendments. The 2019 amendment by No. 910 deleted "Executive" preceding "Director" in (a)(1)(A).

The 2019 amendment by No. 990 deleted "showing him or her to be of good

moral character" following "chiropractic" in (a)(2).

17-81-305. Qualifications of applicants.

- (a) To qualify for licensure, an applicant shall:
 - (1) Be at least twenty-one (21) years of age;
 - (2) Have successfully completed not less than a minimum of sixty (60) semester credit hours of college education, to include a minimum of thirty (30) semester credit hours in the field of science;
 - (3) Not have had a license to practice chiropractic in any other state suspended or revoked nor have been placed on probation for any cause;
 - (4) Possess a valid "doctor of chiropractic" degree from a chiropractic institution whose requirements include a course of instruction of not fewer than four (4) years of nine (9) academic months each or not fewer than four thousand four hundred (4,400) fifty-minute resident class hours and include one hundred twenty (120) classroom hours of physiological therapeutics;
 - (5) Possess a valid National Board of Chiropractic Examiners certificate, to include Parts I, II, III, and IV and the physiological therapeutics section;
 - (6) [Repealed.]
 - (7) Not have been convicted of a felony;
 - (8) Not be an habitual user of intoxicants, drugs, or hallucinatory preparations;
 - (9) Pay the application fee as provided in § 17-81-304; and
 - (10) Cause a certified chiropractic college transcript or National Board of Chiropractic Examiners transcript to be submitted directly from the respective institutions.
- (b) An applicant graduated, as of July 19, 1971, from a school or college of chiropractic, the requirements and course of instruction of which were equal and comparable to other recognized schools or colleges of chiropractic at the time of his or her attendance, may be acceptable.
- (c) For students enrolled in any approved chiropractic school or college which may not, at the passage date of this act, meet the requirements as set forth in subdivision (a)(4) of this section, the Arkansas State Board of Chiropractic Examiners may waive the requirement in individual cases at its discretion.

History. Acts 1971, No. 706, § 10; 1553, § 9; 2016, No. 200, § 5; 2019, No. A.S.A. 1947, § 72-424; Acts 1987, No. 354, 990, § 60.
§ 6; 1989, No. 763, § 1; 1991, No. 786, **Amendments.** The 2019 amendment
§ 25; 1993, No. 1219, § 14; 1999, No. repealed (a)(6).

17-81-318. Criminal background check.

- (a)(1) Each applicant for a license issued by the Arkansas State Board of Chiropractic Examiners is required to apply to the Identification Bureau of the Division of Arkansas State Police for a state and

federal criminal background check to be conducted by the Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation.

(2) A license shall not be issued to an applicant until the board receives and approves the state and federal criminal background check.

(b) The criminal background check shall conform to applicable federal standards that are in effect on January 1, 2017, and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Division of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the board all releasable information obtained concerning the applicant in the commission of any offense listed in subsection (e) of this section.

(e) Except as provided in subsection (f) of this section, a person shall not receive or hold a license issued by the board if the person has been convicted of or pleaded guilty or nolo contendere to any felony listed under § 17-3-102 or a crime involving fraud, dishonesty, untruthfulness, or untrustworthiness, or is a registered sex offender or required to register as a sex offender.

(f)(1) The provisions of subsection (e) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to sanctions.

(2) Circumstances for which a waiver may be granted shall include without limitation:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime was committed;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the public.

(g)(1) Information received by the board from the Identification Bureau of the Division of Arkansas State Police or the Federal Bureau of Investigation under this section shall not be available for examination except by:

(A) The affected applicant for licensure or his or her authorized representative; or

(B) The person whose license is subject to revocation or his or her authorized representative.

(2) A record, file, or document shall not be removed from the custody of the division.

(h) Information made available to the affected applicant for licensure or the person whose license is subject to revocation shall pertain to that person only.

(i) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check.

(j) The board may adopt rules to fully implement this section.

History. Acts 2017, No. 397, § 8; 2019, No. 990, § 61. in (e), inserted “listed under § 17-3-102” and deleted “moral turpitude” following “involving”.

Amendments. The 2019 amendment,

CHAPTER 82
DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS STATE BOARD OF DENTAL EXAMINERS.
- 3. LICENSING GENERALLY.
- 4. LICENSING OF CERTAIN DENTAL ASSISTANTS.
- 5. ANESTHETICS AND SEDATIVES.
- 7. DENTAL HYGIENIST COLLABORATIVE CARE PROGRAM.
- 8. CRIMINAL BACKGROUND CHECKS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-82-102. Definitions.
- 17-82-104. Unlawful practice — Definition.

SECTION.

- 17-82-106. Advertising.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-82-102. Definitions.

As used in this chapter:

(1)(A) “Practicing dentistry” means:

(i) The evaluation, diagnosis, prevention, and treatment by non-surgical, surgical, or related procedures of diseases, disorders, and conditions of the oral cavity, maxillofacial area, and the adjacent and

associated structures and their impact on the human body, but not for the purpose of treating diseases, disorders, and conditions unrelated to the oral cavity, maxillofacial area, and the adjacent and associated structures; and

(ii) The sale or offer for sale of those articles or services of dentistry enumerated in § 17-82-105(a).

(B) "Practicing dentistry" shall include, but not be limited to, the administration of anesthetics for the purpose of or in connection with the performance of any of the acts, services, or practices enumerated or described in this section.

(C) Nothing herein shall be construed to prohibit a licensed physician from extracting teeth in an emergency when, in his or her considered professional judgment, it is necessary and when it is not practicable or reasonable to secure the services of a licensed dentist; and

(2)(A) "The practice of dental hygiene" means the assessment, prevention, and treatment of oral diseases provided by a licensed dental hygienist under the supervision of a licensed dentist as set out in the rules of the Arkansas State Board of Dental Examiners.

(B) The practice of dental hygiene shall include the removal of deposits from supergingival and subgingival surfaces of the teeth and any other services which the board may authorize by rule and which are not prohibited by any provision of this chapter.

History. Acts 1955, No. 14, §§ 10, 13; 1969, No. 91, § 1; 1977, No. 258, § 1; 1981, No. 889, § 1; A.S.A. 1947, §§ 72-543, 72-546; Acts 1999, No. 143, § 1; 2001, No. 439, § 1; 2019, No. 315, § 1511.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (2)(A) and "rule" for "regulation" in (2)(B).

17-82-104. Unlawful practice — Definition.

(a) It is unlawful for a dentist or dental hygienist to:

(1)(A) Practice in the State of Arkansas under any name other than his or her own true name. However, a dentist may practice under a corporate name that complies with the Dental Corporation Act, § 4-29-401 et seq.

(B) A dentist or a dental corporation may practice under a fictitious name if the name has been registered with and approved by the Arkansas State Board of Dental Examiners. The fictitious name must comply with the rules of the board and must not be false or misleading to the general public; or

(2) Aid or assist in any manner any unlicensed person to practice dentistry or dental hygiene or any branch thereof.

(b)(1) It is unlawful for a dentist, whether in practice as owner, proprietor, manager, employee, or partner, to allow any person other than a dentist licensed by the board to:

(A) Direct the dentist's practice; or

(B) Direct, participate in, or affect the diagnosis or treatment of patients under the dentist's care.

(2) However, the phrase “any person” as used in this subsection shall not apply to a patient’s dental insurer or dental HMO or a patient’s designated utilization review organization.

(c) It is unlawful for any corporation to practice dentistry or dental hygiene or to hold itself out as entitled to engage therein.

(d)(1) A registered licensed dental hygienist working at a Division of Correction or Division of Community Correction facility may work under the general supervision of a licensed dentist.

(2)(A) As used in this subsection, “general supervision” means that a licensed dentist has authorized a procedure performed by a dental hygienist but the licensed dentist is not required to be present in the treatment facility while the procedure is being performed by the dental hygienist.

(B) “General supervision” includes the following restrictions:

(i) The dentist shall establish a written office protocol that specifically indicates when a dental hygienist may treat a patient and when a patient is to be seen by a dentist;

(ii) The dental hygienist shall specifically adhere to the protocol for treatment developed by the dentist;

(iii)(a) A dental hygienist working under general supervision may perform any duties that may be delegated to a dental hygienist under this subchapter or the rules of the board.

(b) A dental hygienist may perform duties under subdivision (d)(2)(B)(iii)(a) of this section only after a licensed dentist has examined the patient.

(C) The dental hygienist shall review a patient’s dental health history before treatment.

(e)(1) A person who violates any provision of this section shall upon conviction be guilty of a violation and shall be fined in any sum not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(2) Each day a violation continues shall constitute a separate offense.

(3) In addition to the foregoing criminal sanctions, a person who violates the provisions of this section is subject to the liabilities of § 17-82-301(b).

History. Acts 1955, No. 14, § 26; A.S.A. 1947, § 72-559; Acts 1989, No. 363, § 1; 1993, No. 883, § 1; 2001, No. 950, § 1; 2005, No. 1994, § 85; 2009, No. 203, § 1; 2019, No. 315, § 1512; 2019, No. 910, § 971.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” fol-

lowing “rules” in the second sentence of (a)(1)(B).

The 2019 amendment by No. 910 substituted “Division of Correction” for “Department of Correction” and “Division of Community Correction” for “Department of Community Correction” in (d)(1).

17-82-106. Advertising.

Advertising to the general public for the purpose of soliciting business consisting of any of the acts, services, or practices enumerated in § 17-82-102 or by any rule promulgated by the Arkansas State Board of Dental Examiners under authority of § 17-82-208 shall not be fraudu-

lent or misleading and shall be in conformity with rules adopted by the board.

History. Acts 1955, No. 14, § 11; 1969, No. 91, § 2; 1973, No. 85, § 1; 1981, No. 889, § 2; A.S.A. 1947, § 72-544; Acts 2019, No. 315, § 1513.

Amendments. The 2019 amendment deleted “regulation or” preceding “rule” and “and regulations” following “rules”.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF DENTAL EXAMINERS

SECTION.

17-82-208. Rules.

17-82-209. Expenses — Compensation of members and employees.

SECTION.

17-82-210. Annual reports.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-82-208. Rules.

(a) The Arkansas State Board of Dental Examiners shall have the power to promulgate rules in order to carry out the intent and purposes of this chapter.

(b) The board shall by rule prescribe specifically those acts, services, procedures, and practices which constitute the practice of dentistry.

(c) The board shall also by rule prescribe those acts, services, procedures, and practices which may be performed by dental hygienists and dental assistants at the direction and under the direct supervision of a licensed dentist and shall impose requirements and restrictions on the performance thereof by dental hygienists and dental assistants as it shall deem proper and necessary to protect and promote the public health and welfare of the citizens of this state.

(d) Rules promulgated by the board pursuant to the provisions of this section shall be adopted in accordance with the procedure prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and these rules shall be filed and shall be subject to judicial review as provided in that act.

(e) The board shall promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board.

History. Acts 1955, No. 14, § 4; 1969, No. 91, § 1; 1973, No. 85, § 7; 1981, No. 889, § 1; A.S.A. 1947, §§ 72-537.1, 72-543; Acts 2017, No. 820, § 8; 2019, No. 315, § 1514.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in the section heading, (a), and twice in (d); and deleted “or regulation” following “rule” in (b) and (c).

17-82-209. Expenses — Compensation of members and employees.

(a) The Arkansas State Board of Dental Examiners is empowered to incur whatever expenses the board may deem necessary or expedient in performing its function.

(b) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(c) The board shall fix the salary of the Secretary-treasurer of the Arkansas State Board of Dental Examiners.

(d) All of the disbursements provided for in this section shall be made out of the fees and fines collected by the board.

History. Acts 1955, No. 14, § 32; 1959, No. 4, § 4; 1969, No. 91, § 6; 1977, No. 258, § 5; 1981, No. 889, § 7; A.S.A. 1947, § 72-565; Acts 1987, No. 289, § 1; 1997, No. 250, § 155; 2019, No. 910, § 4873.

Amendments. The 2019 amendment substituted “the board may deem” for “it

may deem” in (a); deleted former (b), which read: “It may employ whatever assistants it may deem necessary or expedient therefor and fix their compensation”; and redesignated former (c)-(e) as present (b)-(d).

17-82-210. Annual reports.

(a) The Arkansas State Board of Dental Examiners at its regular annual meeting shall prepare a report of its receipts and disbursements and its transactions in general for the preceding year.

(b) The report shall be filed with the Secretary of the Department of Health not later than September 1 of each year, and a copy thereof, certified by the President of the Arkansas State Board of Dental Examiners and the Secretary-treasurer of the Arkansas State Board of Dental Examiners, shall be filed at the same time with the Secretary-treasurer of the Arkansas State Dental Association.

History. Acts 1955, No. 14, § 33; A.S.A. 1947, § 72-566; 2019, No. 910, § 4874.

Amendments. The 2019 amendment in (b), substituted “Secretary of the Department of Health” for “Governor”, and

substituted “President of the Arkansas State Board of Dental Examiners and the Secretary-treasurer” for “President and Secretary-treasurer”.

SUBCHAPTER 3 — LICENSING GENERALLY

SECTION.

- 17-82-301. License required — Penalty.
- 17-82-304. Dentists generally — Licensing procedure.
- 17-82-306. Dental hygienists — Licensing procedure.
- 17-82-308. Credentials — Persons licensed in other states.

SECTION.

- 17-82-312. Annual renewal — Relicensing.
- 17-82-313. Renewal — Nonresidents.
- 17-82-316. Revocation or suspension — Grounds — Effect.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-82-301. License required — Penalty.

(a)(1) No person shall practice dentistry or dental hygiene or attempt or offer to practice either within the State of Arkansas without first having been authorized and issued a regular license by the Arkansas State Board of Dental Examiners.

(2) No person shall practice dentistry or dental hygiene or attempt or offer to practice either within the State of Arkansas during any period of suspension of his or her license by the board or after revocation by the board of any license theretofore issued to the offending person.

(b) The board is entitled to the equitable remedy of injunction against any person who practices dentistry or dental hygiene or attempts or offers to practice either in violation of subsection (a) of this section.

(c) Any person who violates any provision of subsection (a) of this section shall be guilty of a Class D felony and shall be subject to imprisonment not to exceed six (6) years in the Division of Correction or a fine of up to ten thousand dollars (\$10,000), or both. Each unauthorized act constitutes a separate offense.

History. Acts 1955, No. 14, §§ 7-9; A.S.A. 1947, §§ 72-540 — 72-542; Acts 1987, No. 497, § 1; 2019, No. 910, § 972.

Amendments. The 2019 amendment

substituted “Division of Correction” for “Department of Correction” in the first sentence of (c).

17-82-304. Dentists generally — Licensing procedure.

(a)(1) A person not previously licensed to practice dentistry in the State of Arkansas who desires to do so shall apply in writing for examination to the Secretary-treasurer of the Arkansas State Board of Dental Examiners and shall transmit with the written application his or her examination and licensing fee.

(2) The examination and licensing fee shall be determined by the Arkansas State Board of Dental Examiners and shall be an amount reasonably calculated to cover the costs of administering the examination, issuing the license to practice, and otherwise administering this chapter.

(b) An applicant:

(1) Shall:

(A) Be at least twenty-one (21) years of age;

(B) Submit upon request proof as required by the board touching upon age and fitness; and

(C) Have graduated from an American Dental Association-accredited college of dentistry with the degree of Doctor of Dental Surgery or Doctor of Dental Medicine; or

(2) Shall:

(A) Be at least twenty-one (21) years of age;

(B) Have graduated from a college of dentistry in North America with the degree of Doctor of Dental Surgery, Doctor of Dental Medicine, or an equivalent degree approved by the board;

(C) Have passed an examination approved by the board and authorized under § 17-82-303;

(D) Be a resident of the State of Arkansas and the United States and be in compliance with federal laws of immigration; and

(E) Serve a period of at least one (1) year under a provisional license issued by the board to foreign graduates and successfully complete the monitoring requirements as ordered by the board at the time the provisional license is issued.

(c)(1) If the board determines that the applicant is qualified to take the examination required for licensing, it shall notify the applicant of the time and place to report before it for examination.

(2) If a qualified applicant fails to appear for examination, the fee shall be retained by the board and the applicant shall be entitled to take any examination required for licensing held at any time within three (3) years thereafter, if he or she is then qualified, without additional fee charge unless the amount of the fee is increased by the board, in which event the applicant must pay the difference between the amount of fee credited to him or her and the increased fee amount.

(3) If an applicant fails to make the grade or percentage required by the board, the fee paid by him or her shall be retained by the board.

(4) If an applicant makes the grade or percentage required by the board, then it shall issue to him or her without further initial cost a license to practice dentistry in the State of Arkansas.

(d)(1) All licenses shall be numbered and issued consecutively.

(2) If a license is lost or destroyed, the secretary-treasurer shall furnish a certified copy to the licensee upon the payment of a fee to be prescribed by the board. The fee shall be an amount reasonably calculated to cover the cost of furnishing the certified copy.

History. Acts 1955, No. 14, § 20; 1959, No. 4, § 1; 1969, No. 91, § 5; 1973, No. 85, § 3; 1977, No. 258, §§ 2, 3; 1981, No. 889, § 3; A.S.A. 1947, § 72-553; Acts 2003, No. 377, § 1; 2003, No. 661, § 1; 2019, No. 990, § 62.

Amendments. The 2019 amendment substituted "Shall" for "Must" in (b)(1) and (b)(2); deleted "and of good moral

reputation and character" following "age" in (b)(1)(A) and (b)(2)(A); in (b)(1)(B), deleted "such" preceding "proof", inserted "required by", deleted "may require" following "board", and deleted "character" following "age"; deleted "been" preceding "graduated" in (b)(1)(C); and made stylistic changes.

17-82-306. Dental hygienists — Licensing procedure.

(a)(1) A dental hygienist who desires to practice his or her profession in the State of Arkansas shall apply in writing for examination to the Secretary-treasurer of the Arkansas State Board of Dental Examiners, and he or she shall transmit with the written application his or her examination and licensing fee.

(2) The examination and licensing fee shall be determined by the Arkansas State Board of Dental Examiners and shall be an amount reasonably calculated to cover the costs of administering the examination, issuing the license to practice, and otherwise administering this chapter.

(b) An applicant shall:

(1) Have graduated from a dental hygiene program which is accredited by the American Dental Association Commission on Dental Accreditation and approved by the board for the training of dental hygienists; and

(2) Submit upon request proof as required by the board touching upon fitness.

(c)(1) If the board determines that the applicant is qualified to take the examination required for licensing, the board shall notify the applicant of the time and place to report before it for examination.

(2) If a qualified applicant fails to appear for examination, the fee shall be retained by the board and the applicant shall be entitled to take any examination required for licensing held at any time within three (3) years thereafter, if he or she is then qualified, without additional fee charge unless the amount of the fee is increased by the board, in which event the applicant must pay the difference between the amount of the fee credited to him or her and the increased fee amount.

(3) If an applicant fails to make the grade or percentage required by the board, the fee paid by him or her shall be retained by the board.

(4) If an applicant makes the grade or percentage required by the board, it shall issue to him or her without further initial cost a license to practice dental hygiene in the State of Arkansas.

(d)(1) All licenses shall be numbered and issued consecutively.

(2) If a license is lost or destroyed, the secretary-treasurer shall furnish a certified copy to the licensee upon the payment of a fee to be prescribed by the board. The fee shall be an amount reasonably calculated to cover the cost of furnishing the certified copy.

History. Acts 1955, No. 14, § 21; 1959, No. 4, § 2; 1973, No. 85, § 4; 1981, No. 889, § 4; A.S.A. 1947, § 72-554; Acts 1995, No. 573, § 1; 2003, No. 377, § 3; 2019, No. 990, § 63.

Amendments. The 2019 amendment substituted “shall” for “must” in the intro-

ductory language of (b); deleted former (b)(1) and redesignated the remaining subdivisions accordingly; and, in (b)(2), deleted “such” preceding “proof”, inserted “required by”, and deleted “character and” preceding “fitness”.

17-82-308. Credentials — Persons licensed in other states.

(a) A dentist or dental hygienist who desires to practice his or her profession in the State of Arkansas and who has been practicing his or her profession continuously for a period of five (5) years or more next preceding the date of the application may apply in writing to the Arkansas State Board of Dental Examiners for a license to practice his or her profession in the State of Arkansas without undergoing the examination required for licensing provided for in §§ 17-82-304 — 17-82-306. The applicant must have been practicing by virtue of a license lawfully issued by the authority of another state, territory, the District of Columbia, or Canada, where the standard of proficiency at least equals that of the State of Arkansas.

(b) The application shall be accompanied by:

(1) A fee to be prescribed by the board which shall be an amount reasonably calculated to cover the costs of processing the application;

(2) The original or certified copy of the original license under which the applicant has been practicing his or her profession; or

(3) A certificate from the authority which issued the license, setting forth the applicant's history with the board, professional ability, and such other information or data as the board may deem necessary or expedient.

(c) Upon furnishing satisfactory proof of his or her fitness as contemplated in this section, the board in its discretion may issue a license to practice his or her profession to the applicant without further cost except as otherwise provided in this chapter for the renewal of licenses.

History. Acts 1955, No. 14, § 23; 1981, No. 889, § 6; A.S.A. 1947, § 72-556; Acts 1987, No. 499, § 1; 1993, No. 270, § 1; 2001, No. 439, § 3; 2019, No. 990, § 64.

Amendments. The 2019 amendment, deleted “moral reputation and character” preceding “history” in (b)(3).

17-82-312. Annual renewal — Relicensing.

(a) A dentist or dental hygienist whose license has been automatically forfeited pursuant to § 17-82-311 shall be relicensed at any time until January 1 of the year following the forfeiture by:

(1) Applying in writing to the Arkansas State Board of Dental Examiners;

(2) Paying all accrued renewal fees as established under § 17-82-310 and provided for in the rules of the board, plus an additional penalty of two hundred dollars (\$200); and

(3) Furnishing such proof as the board may require that, in the period since January 1 of the year when his or her license ought first to have been effected, he or she has continuously conducted himself or herself in an ethical and proper fashion and complied with the rules of the board and the provisions of this chapter.

(b) A dentist or dental hygienist who applies for relicensing, following forfeiture, after two (2) years from January 1 of the year when his or her license ought first to have been effected may be relicensed by:

(1) Complying with the requirements of subsection (a) of this section; and

(2)(A) Undergoing reexamination and passing the examination required by the rules of the board.

(B) The reexamination shall consist of clinical skills only.

History. Acts 1955, No. 14, § 22; 1959, No. 4, § 3; 1975, No. 369, § 1; 1977, No. 258, § 4; 1981, No. 889, § 5; A.S.A. 1947, § 72-555; Acts 1999, No. 581, § 3; 2001, No. 439, § 7; 2019, No. 315, §§ 1515, 1516.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(2), (a)(3), and (b)(2)(A).

17-82-313. Renewal — Nonresidents.

(a)(1) A dentist or dental hygienist who has been licensed and who becomes a nonresident of the State of Arkansas may continue in effect his or her license to practice in the State of Arkansas by paying the renewal fee required of resident dentists and dental hygienists.

(2) Before resuming the practice of his or her profession in the State of Arkansas, the dentist or dental hygienist shall:

(A) First furnish satisfactory proof to the Arkansas State Board of Dental Examiners that he or she has continuously practiced dentistry or dental hygiene since leaving the State of Arkansas and has at all times conducted himself or herself in an ethical and proper fashion; and

(B) Pass such examinations and provide such evidence and information as the board may require as delineated in its rules.

(3) Upon the furnishing of such proof to the board, the board shall cause to be issued to the applicant the authority to resume his or her practice in the State of Arkansas.

(b) A dentist or dental hygienist who has been licensed and who becomes a nonresident of the State of Arkansas and who fails to pay the registration fee required of resident dentists or dental hygienists as permitted by this section shall be entitled to resume practice in the State of Arkansas by complying with the requirements of § 17-82-312.

History. Acts 1955, No. 14, § 22; A.S.A. 1947, § 72-555; Acts 1999, No. 581, §§ 1, 2; 2001, No. 439, § 8; 2003, No. 377, § 7; 2019, No. 315, § 1517.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (a)(2)(B).

17-82-316. Revocation or suspension — Grounds — Effect.

(a) The Arkansas State Board of Dental Examiners is vested with the power to revoke or suspend for any period of time the privilege of practicing under any license issued in the State of Arkansas to any dentist, dental hygienist, or dental assistant possessing an expanded duties permit if the board finds that the licensee or permit holder has violated this chapter, the rules of the board, or a previous order of the board.

(b) In addition to suspending or revoking a license or permit, the board may:

(1) Place a licensee on probation for a period not exceeding eighteen (18) months per violation under terms and conditions determined by the board to be in the best interest of the licensee and the people of the State of Arkansas;

(2) Impose a fine not to exceed one thousand dollars (\$1,000) per violation; or

(3) Require a licensee or permit holder to reimburse the board for its costs in conducting the investigation and hearing.

(c) The board may impose one (1) or more of the penalties set out in subsection (b) of this section if the board finds that the licensed dentist, dental hygienist, or permit holder has violated this chapter, or the rules of the board, or has committed one (1) or more of the following acts:

(1) The presentation to or filing with the board, for the purpose of securing a license to practice dentistry or dental hygiene or to obtain any permit issued by the board, of any diploma, license, or certificate illegally or fraudulently obtained by the applicant;

(2) The use of an assumed or fictitious name in applying for a license for the purpose of shielding moral unfitness or a criminal record;

(3) The commission of any criminal operation; habitual drunkenness for a period of three (3) months; insanity; adjudication of insanity or mental incompetency if deemed detrimental to patients; conviction of a felony listed under § 17-3-102; addiction to narcotics; immoral, dishonorable, or scandalous conduct; professional incompetency; failure to maintain proper standards of sanitation or failure otherwise to maintain adequate safeguards for the health and safety of patients; or employment in the practice of the profession of any drug, nostrum, unknown formula, or dangerous or unknown anesthetic not generally used by the dental profession;

(4) The advertising of services to the public which is fraudulent and misleading or which does not comply with the rules of the board;

(5) The permitting of any unlicensed person under his or her supervision or control to perform any act, service, practice, or operation on any patient or prospective patient which constitutes a part of the

practice of dentistry or dental hygiene or is involved with the administration of drugs, medicines, or anesthetics, except those services permitted by the board and under the supervision of a licensed dentist;

(6) The violation of any rule of board standards of professional conduct for dentists and dental hygienists practicing within the state;

(7) The violation of any term of probation or order previously entered by the board affecting the licensee or permit holder; or

(8) Having been found in violation of a statute or a rule governing the practice of dentistry or dental hygiene by the dental licensing authority or agency or another state.

(d) The board may revoke the license of a dentist who permits a dental hygienist or dental assistant under his or her supervision to perform any of the acts, services, or practices which are prohibited by this chapter. The board also may revoke the license of the offending dental hygienist or the permit of the dental assistant.

(e) No license revoked by the board shall ever be renewed.

(f) No license which has been suspended by the board shall be reinstated until the offender has:

(1) Given satisfactory assurance of future correct conduct; and

(2) Paid a fee of fifty dollars (\$50.00) to the board.

(g) A license may be suspended or revoked if during the term of his or her probation the licensee shall violate any of the terms of his or her probation as set forth by the board.

(h) Any fine imposed on a licensee shall be paid to the board before the resumption of the practice of dentistry or dental hygiene by the licensee.

(i) A dentist or dental hygienist who resumes his or her practice after the revocation of his or her license is subject to the penalties and liabilities prescribed in § 17-82-301(b) and (c).

History. Acts 1955, No. 14, §§ 17, 27; 1973, No. 85, § 5; 1983, No. 778, § 1; A.S.A. 1947, §§ 72-550, 72-560; Acts 1987, No. 498, § 1; 2001, No. 439, § 10; 2007, No. 123, § 1; 2019, No. 315, §§ 1518, 1519; 2019, No. 990, § 65.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a) and in the introductory lan-

guage of (c); deleted “and regulations” following “rules” in (c)(4); and deleted “or regulation” following “rule” in (c)(6) and (c)(8).

The 2019 amendment by No. 990, in (c)(3), substituted “conviction of a felony” for “conviction of an infamous crime or felony” and inserted “listed under § 17-3-102”.

SUBCHAPTER 4 — LICENSING OF CERTAIN DENTAL ASSISTANTS

SECTION.

17-82-403. Permit required.

17-82-404. Applications — Issuance.

SECTION.

17-82-406. Rules.

17-82-403. Permit required.

No person shall perform the expanded duties of a dental assistant as defined by the Arkansas State Board of Dental Examiners in the rules of the board without a permit.

History. Acts 1985, No. 473, § 2; A.S.A. 1947, § 72-572; Acts 2019, No. 315, § 1520.

Amendments. The 2019 amendment deleted “and regulations” following “rules”.

17-82-404. Applications — Issuance.

(a) A dental assistant who desires to perform expanded duties as defined by the rules of the Arkansas State Board of Dental Examiners in the State of Arkansas shall apply in writing for examination to the Secretary-treasurer of the Arkansas State Board of Dental Examiners, and he or she shall transmit with the written application his or her examination and licensing fee.

(b) The examination and licensing fee shall be determined by the board and shall be an amount reasonably calculated to cover the costs of administering the examination, issuing the license to practice, and otherwise administering this subchapter.

(c) An applicant must be of good moral reputation and character and a graduate of a school or course of study approved by the board for the training of dental assistants.

(d) An applicant must submit upon request such proof as the board may require touching upon character and fitness.

(e)(1) If after considering an application and its accompanying records the board finds that the applicant is not qualified to take the examination, the board shall refund the entire amount of the examination and licensing fee paid by the applicant.

(2) If a qualified applicant fails to appear for examination, the fee shall be retained by the board.

(3) If an applicant fails to make the grade or percentage required by the board, the fee paid by him or her shall be retained by the board.

(f) If an applicant makes the grade or percentage required by the board, it shall issue to him or her without further initial cost a permit to perform the expanded duties of a dental assistant in the State of Arkansas.

(g) All permits shall be numbered and issued consecutively.

(h) If a permit is lost or destroyed, the secretary-treasurer shall furnish a certified copy of the permit to the permittee upon the payment of a fee to be prescribed by the board, and the fee shall be in an amount reasonably calculated to cover the cost of furnishing the certified copy.

History. Acts 1985, No. 473, § 4; A.S.A. 1947, § 72-574; Acts 2019, No. 315, § 1521.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (a).

17-82-406. Rules.

All laws pertaining to dentists and dental hygienists as stated in subchapters 1-3 of this chapter and the rules of the Arkansas State Board of Dental Examiners will apply to dental assistants who perform expanded duties.

History. Acts 1985, No. 473, § 6; A.S.A. 1947, § 72-576; Acts 2019, No. 315, § 1522. deleted “and regulations” following “Rules” in the section heading; and deleted “and regulations” following “rules”.

Amendments. The 2019 amendment

SUBCHAPTER 5 — ANESTHETICS AND SEDATIVES

SECTION.

17-82-502. Permit to administer.

17-82-503. Application for permit.

17-82-502. Permit to administer.

A dentist receiving a permit to administer general anesthesia or sedation may administer it in compliance with the rules of the Arkansas State Board of Dental Examiners.

History. Acts 1987, No. 584, § 1; 1997, No. 128, § 1; 2019, No. 315, § 1523. deleted “and regulations” following “rules”.

Amendments. The 2019 amendment

17-82-503. Application for permit.

(a) Any dentist who desires to administer to a patient general anesthesia or sedation as defined by the rules of the Arkansas State Board of Dental Examiners and the State of Arkansas shall apply in writing for a permit from the board, shall submit to an on-site inspection by the board, as defined and described in the rules of the board, and shall transmit with the application a fee reasonably calculated by the board to cover the costs and expenses of administering the on-site inspection and otherwise administering this subchapter.

(b) The application shall request such information as the board may require as stated in its rules.

History. Acts 1987, No. 584, § 1; 1997, No. 128, § 2; 2019, No. 315, § 1524. deleted “and regulations” following “rules” twice in (a) and in (b).

Amendments. The 2019 amendment

SUBCHAPTER 7 — DENTAL HYGIENIST COLLABORATIVE CARE PROGRAM

SECTION.

17-82-701. Definitions.

17-82-701. Definitions.

As used in this subchapter:

(1) “Collaborative agreement” means a written agreement between a dentist licensed by the Arkansas State Board of Dental Examiners and a dental hygienist licensed by the Arkansas State Board of Dental Examiners providing that the dental hygienist may provide prophylaxis, fluoride treatments, sealants, dental hygiene instruction, assessment of a patient’s need for further treatment by a dentist, and if delegated by the consulting dentist, other services provided by law to

children, senior citizens, and persons with developmental disabilities in a public setting without the supervision and presence of the dentist and without a prior examination of the persons by the dentist;

(2) "Collaborative dental hygienist" means a dental hygienist who holds a Collaborative Care Permit I, a Collaborative Care Permit II, or both, from the Arkansas State Board of Dental Examiners and who has entered into a collaborative agreement with no more than one (1) consulting dentist regarding the provision of services under this subchapter;

(3) "Consulting dentist" means a dentist who holds a Collaborative Dental Care Permit from the Arkansas State Board of Dental Examiners and:

(A) If engaged in the private practice of dentistry, has entered into a collaborative agreement with no more than three (3) collaborative dental hygienists regarding the provision of services under this subchapter; or

(B) Is employed by the Department of Health;

(4) "Medicaid" means the medical assistance program established under § 20-77-101 et seq.;

(5) "Public settings" means:

(A) Adult long-term care facilities;

(B) Charitable health clinics that provide free or reduced-fee services to low-income patients;

(C) County incarceration facilities;

(D) Facilities that primarily serve individuals with intellectual or other developmental disabilities;

(E) Head Start programs;

(F) Homes of homebound patients who qualify for in-home medical assistance;

(G) Hospital long-term care units;

(H) Local health units;

(I) Schools;

(J) Community health centers; and

(K) State correctional institutions; and

(6) "Senior citizen" means a person sixty-five (65) years of age or older.

History. Acts 2011, No. 89, § 1; 2019, No. 1035, § 10. or other developmental disabilities" for "developmentally disabled persons" in

Amendments. The 2019 amendment substituted "individuals with intellectual (5)(D).

SUBCHAPTER 8 — CRIMINAL BACKGROUND CHECKS

SECTION.

17-82-802. License eligibility.

17-82-802. License eligibility.

A person shall not be eligible to receive or hold a license to practice dentistry or another healthcare profession issued by the Arkansas State Board of Dental Examiners if the person has pleaded guilty or nolo contendere or has been found guilty of a felony listed under § 17-3-102.

History. Acts 2011, No. 47, § 1; 2019, No. 990, § 66.

Amendments. The 2019 amendment deleted “either an infamous crime that would impact his or her ability to practice dentistry or oral hygiene in the State of

Arkansas or” preceding “a felony”, substituted “listed under § 17-3-102” for “regardless of whether the conviction has been sealed, expunged, or pardoned”, and made a stylistic change.

CHAPTER 83
DIETITIANS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS DIETETICS LICENSING BOARD.
- 3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-83-105. Violations of chapter.

17-83-105. Violations of chapter.

The following acts shall constitute violations of this chapter:

- (1) Representing oneself to be a dietitian or licensed dietitian, using the words “dietitian” or “provisional licensed dietitian” alone or in combination, or using the initials, “L.D.” or “P.L.D.” or any other letters, words, abbreviations, or insignia indicating that he or she is a dietitian, unless he or she is duly licensed as such under this chapter;
- (2) Practicing or attempting to practice dietetics without having first been licensed or otherwise permitted under this chapter;
- (3) Obtaining or attempting to obtain a license or renewal of a license by bribery or fraudulent representation; and
- (4) Knowingly making a false statement on any form promulgated under this chapter or the rules promulgated under this chapter.

History. Acts 1989, No. 392, § 14; 1991, No. 786, § 26; 2019, No. 315, § 1525.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (4).

SUBCHAPTER 2 — ARKANSAS DIETETICS LICENSING BOARD

SECTION.

- 17-83-202. Organization and meetings.
- 17-83-203. Duties and powers — Fees — Continuing education.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-83-202. Organization and meetings.

(a)(1) At least two (2) regular meetings of the Arkansas Dietetics Licensing Board shall be held each calendar year, and at the first regular meeting every two (2) years, the board shall elect a chair and vice chair. Other regular meetings may be held at such time as the rules of the board may provide.

(2) Special called meetings may be held at the discretion of the Chair of the Arkansas Dietetics Licensing Board or at the written request of any three (3) members of the board.

(3) Reasonable notice of all meetings shall be given in the manner prescribed by the laws of this state.

(4) A quorum of the board shall consist of four (4) members.

(5) A secretary of the board shall be employed by the Department of Health.

(6) The board shall adopt a seal, which must be affixed to all certificates issued by the board.

(b) The Department of Health shall employ personnel for the performance of the board's functions and the board may disburse funds to the Department of Health to employ necessary personnel for the performance of the board's functions.

History. Acts 1989, No. 392, §§ 9, 10; 2019, No. 910, § 4875.

Amendments. The 2019 amendment deleted "Personnel" from the end of the section heading; rewrote (a)(5), which formerly read: "A secretary of the board shall be elected by the board and shall hold

office at the pleasure of the board"; and rewrote (b), which formerly read: "The board shall employ necessary personnel for the performance of its functions and fix the compensation thereof within the limits of funds available to the board".

17-83-203. Duties and powers — Fees — Continuing education.

(a) In addition to the duties set forth elsewhere in this chapter, the Arkansas Dietetics Licensing Board shall:

(1) Establish an examination procedure, utilizing the examination approved by the board;

(2) Establish a licensure reciprocity agreement with other states;

(3) Annually compile a list of names, addresses, both residential and business, and dates and license numbers of all persons licensed under this chapter to be available upon request and cost;

(4) Establish mechanisms for appeal and decisions regarding applications and granting of licenses, such mechanisms to include provisions for judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(5) Make such rules not inconsistent with law as may be necessary to regulate its proceedings;

(6) Promulgate rules necessary to implement this chapter;

(7) Compile an annual report;

(8) Establish rules defining unprofessional conduct and set forth and publish standards of professional responsibility and publish standards for practice within twelve (12) months after the first board meeting;

(9) Receive and process complaints;

(10) Impose penalties;

(11) Establish fees and publish financial records; and

(12) Require at the time of license renewal each applicant to present satisfactory evidence that in the period since the license was issued he or she has completed the continuing education requirements in a manner specified by the board.

(b) The board shall establish, charge, and collect for:

(1) The filing of an application for a license under this chapter;

(2) The original issuance of a license under this chapter;

(3) A renewal of a license issued in accordance with this chapter; and

(4) Replacement of a license or renewal lost or destroyed.

(c) The board shall establish continuing education requirements and shall notify the applicants for licensing of the requirements.

History. Acts 1989, No. 392, § 9; 2019, No. 315, § 1526. deleted “and regulations” following “rules” in (5) and (6).

Amendments. The 2019 amendment

SUBCHAPTER 3 — LICENSING

SECTION.

17-83-307. Grounds for denial, revocation, or suspension.

17-83-307. Grounds for denial, revocation, or suspension.

The Arkansas Dietetics Licensing Board may refuse to issue or renew a license or may revoke or suspend a license issued under this chapter for any of the following, but is not limited to:

(1) Violation of a provision of this chapter;

(2) Engaging in unprofessional conduct or gross incompetence as defined by the rules of the board or violating the standards of professional responsibility adopted and published by the board; or

(3) Conviction of a felony listed under § 17-3-102.

History. Acts 1989, No. 392, § 15; 2019, No. 990, § 67.

Amendments. The 2019 amendment substituted "Conviction of a felony listed

under § 17-3-102" for "Conviction in this or any other state of any crime that is a felony in this state" in (3); and deleted (4).

CHAPTER 84

HEARING INSTRUMENT DISPENSERS

SUBCHAPTER.

2. ARKANSAS BOARD OF HEARING INSTRUMENT DISPENSERS.
3. LICENSING.

SUBCHAPTER 2 — ARKANSAS BOARD OF HEARING INSTRUMENT DISPENSERS

SECTION.

- 17-84-201. Creation and composition.
- 17-84-202. Organization and proceedings.

SECTION.

- 17-84-203. Powers and duties.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-84-201. Creation and composition.

(a) There is created the Arkansas Board of Hearing Instrument Dispensers.

(b) The board shall be composed of seven (7) voting members appointed by the Governor, subject to confirmation by the Senate, for terms of three (3) years, and one (1) nonvoting advisory member appointed by the Governor for a term of three (3) years as follows:

(1)(A) At least four (4) of the members shall be hearing instrument dispensers licensed under this chapter who have held a valid license for at least three (3) years.

(B) The Governor shall consult the Arkansas Hearing Society, Inc., before making an appointment under subdivision (b)(1)(A) of this section;

(2) At least one (1) member shall be an audiologist holding a master's degree or doctoral degree in audiology from a recognized college or university;

(3)(A) Two (2) members shall be appointed from the state at large to represent consumers.

(B) The consumer representatives under subdivision (b)(3)(A) of this section shall not be actively engaged in or retired from the practice of dispensing hearing instruments.

(C) The consumer representatives under subdivision (b)(3)(A) of this section shall be full voting members but shall not participate in the grading of examinations; and

(4)(A) The advisory member shall be a physician licensed to practice medicine in Arkansas and specializing in otology or otolaryngology.

(B) The advisory member shall not count for or against the board's quorum requirement to conduct business.

(c)(1) All terms shall expire on July 31 of the designated year.

(2) Each member shall serve for the term of his or her appointment and until his or her successor has been appointed and qualified.

(3) No member shall serve more than three (3) full terms consecutively.

(d) In the event of a vacancy on the board, a new member shall be appointed to serve out the unexpired term.

(e) The Governor may remove any member for cause.

History. Acts 1969, No. 197, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-1701; Acts 1991, No. 46, § 1; 1999, No. 592, § 4; 2007, No. 428, § 2; 2015, No. 1100, § 32; 2017, No. 540, § 27; 2021, No. 159, § 1.

Amendments. The 2021 amendment, in the introductory language of (b), in-

serted "voting" and "and one (1) nonvoting advisory member appointed by the Governor for a term of three (3) years"; deleted former (b)(2) and redesignated former (b)(3) and (4) as (b)(2) and (3); substituted "Two (2) members" for "One (1) member" in (b)(3)(A); added (b)(4); and updated internal references and made conforming changes.

17-84-202. Organization and proceedings.

(a)(1) The Arkansas Board of Hearing Instrument Dispensers shall meet at least two (2) times a year at times and places to be designated by the board and upon such notice as the board may prescribe.

(2) The board shall elect a chair, vice chair, and secretary-treasurer annually, each to serve in his or her respective capacity for one (1) year.

(b)(1) A majority of the members of the board, when properly convened, may conduct business of the board.

(2) The board may appoint one (1) or more of its members or any other person it deems appropriate as examiners for the purpose of hearing evidence, reporting findings thereon, and making recommendations to the entire board for a decision on any matter over which the board has authority.

(c) The board shall keep a record of all of its proceedings and transactions and shall annually make a report to the Secretary of the Department of Health showing all receipts and disbursements and a summary of all business transacted during the year.

History. Acts 1969, No. 197, §§ 1, 15; A.S.A. 1947, §§ 72-1701, 72-1715; Acts 1991, No. 46, § 1; 2019, No. 910, § 4876; 2021, No. 159, § 2.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Governor" in (c).

The 2021 amendment redesignated (b) as (b)(1) and (2); and substituted "A majority of the members" for "Any five (5) of the eight (8) members" in (b)(1).

17-84-203. Powers and duties.

The powers and duties of the Arkansas Board of Hearing Instrument Dispensers are:

(1) To authorize all disbursements necessary to carry out the provisions of this chapter and to receive and account for all fees;

(2) To furnish a list of study materials for applicants to use in preparing for qualifying examinations;

(3) To ensure that at least one (1) time each year a qualifying examination based on nationally accepted norms to test the knowledge and proficiency of applicants is administered;

(4) To register, issue, and renew licenses and internships to persons qualified under this chapter and to suspend, revoke, or refuse to renew licenses and internships pursuant to this chapter;

(5) To make rules not inconsistent with the laws of this state that are necessary for the enforcement and orderly administration of this chapter. However, no rule shall be promulgated that in any manner serves to restrict the number of licenses that may be issued in any city, town, or county of this state;

(6)(A) To require the periodic inspection and calibration of audiometric testing equipment and tympanometers and to carry out the periodic inspection of facilities of persons who practice the fitting or selling of hearing instruments.

(B) The board may inspect an established place of business during regular hours of operation;

(7) To employ and retain the services of attorneys, accountants, and other necessary assistants in carrying out the provisions of this chapter;

(8) To require, if the board deems necessary, an applicant, dealer, or licensee to furnish a surety bond in an amount fixed by the board for the benefit of any person damaged as the result of a violation of this chapter. All requirements pertaining to the surety bond may be promulgated by rule of the board;

(9) To set the following fees:

(A) An application fee not to exceed two hundred fifty dollars (\$250);

(B) An examination fee not to exceed:

(i) Three hundred dollars (\$300) for the written examination; and

(ii) Fifty dollars (\$50.00) each for the earmold practicum, the audiometric practicum, and the law and rules practicum;

(C) A reexamination fee not to exceed the fee under subdivision (9)(B) of this section for the portion of the examination being retaken;

(D) A permanent registration fee not to exceed seventy-five dollars (\$75.00);

(E) An annual license fee not to exceed two hundred fifty dollars (\$250);

(F) A late penalty of ten percent (10%) of the annual license fee if paid within thirty (30) days after expiration;

(G) A license reinstatement fee of one and one-half (1 ½) times the annual license fee, if the renewal fee is not paid within the thirty-day grace period;

(H) An internship fee not to exceed two hundred fifty dollars (\$250);

(I) A fee for an endorsement to another state not to exceed twenty dollars (\$20.00);

(J) A license replacement fee or a duplicate license fee not to exceed twenty-five dollars (\$25.00);

(K) An insufficient funds fee not to exceed twenty-five dollars (\$25.00); and

(L) A continuing education unit approval fee not to exceed two hundred fifty dollars (\$250);

(10)(A) To request the use of Department of Health investigators, issue subpoenas, and perform all activities necessary to effectively investigate claims and pursue disciplinary action against licensees.

(B) The board may inspect or may authorize the Department of Health investigators to inspect an established place of business during regular hours of operation; and

(11) To establish the standards of practice for hearing instrument dispensers in the State of Arkansas.

History. Acts 1969, No. 197, § 3, subsec. (2); A.S.A. 1947, § 72-1704; Acts 1991, No. 46, § 1; 1995, No. 1342, § 1; 1999, No. 592, § 5; 2007, No. 428, § 3; 2015, No. 1027, §§ 1, 2; 2017, No. 373, §§ 8, 9; 2019, No. 315, §§ 1527, 1528; 2019, No. 910, § 4877.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” fol-

lowing “rules” and “or regulation” following “rule” in (5); and substituted “rule” for “regulation” in the second sentence in (8).

The 2019 amendment by No. 910, in (10), substituted “To request the use of Department of Health” for “To employ” in (A), and inserted “inspect or may authorize the Department of Health investigators to” in (B).

SUBCHAPTER 3 — LICENSING

SECTION.

17-84-304. Qualifications for licensure and internship.

SECTION.

17-84-308. Suspension, revocation, nonissuance, or nonrenewal.

17-84-304. Qualifications for licensure and internship.

(a) An applicant for a license by examination or for an internship shall:

(1) Submit an application on the form and within the time prescribed by the Arkansas Board of Hearing Instrument Dispensers;

(2) Pay an application fee in the amount prescribed by the board; and

(3) Show to the satisfaction of the Arkansas Board of Hearing Instrument Dispensers that he or she:

(A) Is twenty (20) years of age or older; and

(B) Has an education equivalent of two (2) or more years of accredited college-level course work from a regionally accredited college or university.

(b) An applicant who meets the qualifications set out in subsection (a) of this section shall meet at least one (1) of the following criteria:

(1)(A) Complete a valid one-year employment internship during which he or she is under the direct personal and physical supervision of a sponsor who has continuously held in good standing for a period of not less than three (3) years either a valid Arkansas hearing instrument dispenser's license or a valid Arkansas audiology license.

(B) The board shall determine by rule what constitutes a valid one-year employment internship;

(2) Hold a National Board for Certification in Hearing Instrument Sciences certificate;

(3) Be registered as a hearing instrument dispenser in good standing in another state whose licensing requirements meet or exceed the licensing requirements of the State of Arkansas at the time of his or her application;

(4) Be a graduate of an American Conference of Audioprosthology program; or

(5) Hold an Associate of Applied Science degree in Hearing Healthcare Practitioner or a similar degree from a regionally accredited college or university.

(c) Before the beginning of the internship period, the applicant shall:

(1) Receive board approval of the application and training schedule; and

(2) Pay the internship fee prescribed by the board under this chapter.

(d)(1) A person participating in a valid internship program as determined by the board under subdivision (b)(1)(B) of this section may take the licensing examination, written or practicum, or both, upon written recommendation of his or her sponsor after successfully completing six (6) months in the internship program.

(2) If the person successfully passes the examination, he or she may complete the one-year internship program under the oversight of the sponsor without direct personal and physical supervision if he or she works out of the same place of business as the sponsor.

(3) If the person fails any part of the examination, he or she shall complete the full one-year internship before reexamination.

(4)(A) Any examination taken during an internship shall be considered as one (1) of three (3) attempts to pass the examination allowed under § 17-84-305(d).

(B) After three (3) failed attempts to pass the examination allowed under § 17-84-305(d), the person shall repeat the internship application.

(5) It is a violation of this chapter for any person during the course of his or her internship to practice the dispensing of hearing instruments except under:

(A) The direct personal and physical supervision of his or her sponsor; or

(B) The conditions set out in this subsection.

History. Acts 1969, No. 197, § 6; A.S.A. 2015, No. 1027, § 3; 2017, No. 373, 1947, § 72-1707; Acts 1991, No. 46, § 1; §§ 2-4; 2019, No. 990, § 68.
1995, No. 1342, § 3; 1999, No. 592, § 7; **Amendments.** The 2019 amendment 2001, No. 290, § 1; 2007, No. 428, § 4; deleted (a)(3)(C).

17-84-308. Suspension, revocation, nonissuance, or nonrenewal.

(a) The Arkansas Board of Hearing Instrument Dispensers may suspend, revoke, or refuse to issue or renew the license or internship of any person for any of the following causes:

(1) Being convicted of a crime listed under § 17-3-102;

(2) Securing a license or internship under this chapter through fraud or deceit;

(3) Unethical conduct, gross ignorance, or inefficiency in the conduct of his or her practice;

(4) Using a false name or an alias in his or her practice;

(5) Violation of any provision of this chapter; or

(6) Failure to comply with any of the requirements for issuance of the license or internship.

(b) In addition to acting against a license or internship or in lieu of acting against a license or internship, the board may fine the individual in an amount not to exceed two thousand dollars (\$2,000) for each offense.

(c) The board may dismiss any complaint or charges which it finds to be unfounded or trivial. The board may settle any complaint or charges without holding a hearing.

History. Acts 1969, No. 197, § 13; A.S.A. 1947, § 72-1713; Acts 1991, No. 46, § 1; 1999, No. 592, § 11; 2019, No. 990, § 69. **Amendments.** The 2019 amendment rewrote (a)(1).

CHAPTER 85

LAY MIDWIVES

SECTION.

17-85-107. Power to license.

17-85-109. Reporting of transfers.

17-85-107. Power to license.

(a) The State Board of Health is empowered to license lay midwives in this state pursuant to rules established by the board to include, but not be limited to:

- (1) The qualifications for licensure;
- (2) Standards of practice for prenatal, intrapartum, and postpartum care of mother and baby;
- (3) Physician supervision, physician consultation, licensed nurse-midwife supervision or consultation, or physician and hospital backup;
- (4) Grievance procedures; and
- (5) Recordkeeping and reporting.

(b) The lawful practice of lay midwifery shall be under the supervision of a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(c) The board may suspend or revoke any licenses issued under this chapter for violations of this chapter or rules promulgated under this chapter.

History. Acts 1987, No. 481, § 3; 2019, substituted “rules” for “regulations” in the No. 315, § 1529. introductory language of (a) and in (c).

Amendments. The 2019 amendment

17-85-109. Reporting of transfers.

A hospital or licensed healthcare facility shall report to the Department of Health when a known transfer occurs of a patient from the care of a lay midwife during the labor and delivery process to the hospital or licensed healthcare facility.

History. Acts 2019, No. 977, § 1.

CHAPTER 86

MASSAGE THERAPISTS

SUBCHAPTER.

2. REGULATION BY STATE BOARD OF HEALTH.
3. REGISTRATION.

SUBCHAPTER 2 — REGULATION BY STATE BOARD OF HEALTH**SECTION.**

- 17-86-203. Powers and duties.
17-86-204. Records.

SECTION.

- 17-86-205. Disposition of funds.

17-86-203. Powers and duties.

(a)(1) The State Board of Health may promulgate and enforce reasonable rules for the purpose of carrying out this chapter.

(2) The board shall follow the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as to “rule” and “rulemaking” definitions and for the adoption and filing of rules.

(b)(1)(A) The Department of Health shall inspect or cause an inspection of student records at least one (1) time each year for each massage therapy school operated in this state.

(B) The department and its agents and employees may enter and inspect a massage therapy clinic, spa, or school during operating hours of the business.

(2) The department and its agents and employees shall not request or be granted permission to enter a room of a massage therapy clinic, spa, or school in which a client is receiving treatment from a licensee under this chapter.

(c) The department may hold licensing examinations from time to time at a place or places as the department may designate.

(d)(1) The department may require each original applicant and each upgrade applicant for a license issued by the Department of Health to apply to the Identification Bureau of the Division of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation.

(2) The state and federal criminal background check shall conform to applicable federal standards and shall include the taking of fingerprints.

(3) The applicant shall sign a release of information to the department and shall be responsible for the payment of any fees associated with the state and federal criminal background check.

(4)(A) Each applicant who has resided outside of Arkansas shall provide a state and federal criminal background check, including the taking of fingerprints, issued by the state or states in which the applicant resided.

(B) Results shall be sent directly to the department from the agency performing the state and federal criminal background check.

(e) For purposes of this section, the board shall follow the licensing restrictions based on criminal records under § 17-3-102.

History. Acts 1981, No. 875, §§ 5, 6; 8; 2015, No. 1020, § 10; 2015, No. 1083, A.S.A. 1947, §§ 72-1205, 72-1206; Acts § 3; 2019, No. 990, § 70.
1991, No. 1217, § 1; 1993, No. 714, § 3; **Amendments.** The 2019 amendment
1997, No. 840, § 4; 1999, No. 1461, § 6; deleted the (e)(1) designation; rewrote (e);
2009, No. 1305, § 3; 2013, No. 1445, §§ 7, and deleted (f) through (h).

17-86-204. Records.

(a)(1) The Department of Health shall maintain a record book and computer file in which will be entered the names and addresses of all persons to whom licenses have been granted under this chapter, the license number, and the dates of granting such licenses and renewals thereof, and other matters of record.

(2) The department will move to a separate book and file the records of all persons who have died, have let their licenses lapse for three (3) years, whose licenses have been suspended or revoked by the department, or cancelled by the licensee.

(b) The record books and computer files so provided and maintained shall be deemed and considered a book of records and files of records, and they will be kept in a timely manner. A transcript of any record therein or a license number or date of granting such a license to a person charged with a violation of any of the provisions of this chapter shall be admitted as evidence in any of the courts of this state if certified by the department.

(c)(1) The original books, records, and papers of the department shall be maintained at the offices of the department.

(2) A school that closes shall immediately submit all student transcripts to the department office.

(d) Copies of records may be furnished to any person requesting them upon payment of such copying fee as the department may require and as Arkansas state laws and rules permit. However, licensing exams shall be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1981, No. 875, § 13; A.S.A. 1947, § 72-1213; Acts 1991, No. 1217, § 1; 1997, No. 840, § 5; 1999, No. 1461, § 7; 2013, No. 1445, § 9; 2015, No. 1020, § 11; 2019, No. 315, § 1530.

Amendments. The 2019 amendment substituted “rules” for “regulations” in the first sentence of (d).

17-86-205. Disposition of funds.

(a)(1) All moneys remitted to the Department of Health under this chapter shall be made payable to the Department of Health.

(2) The Department of Health shall deposit all such funds received in a timely manner in accordance with laws of the State of Arkansas and rules of the Department of Finance and Administration.

(b)(1) All moneys received under this chapter shall be paid into the State Treasury and shall be credited to the Public Health Fund for the general uses of the Department of Health.

(2) Salaries and other expenses necessarily incurred in carrying into effect the provisions of this chapter and other programs administered by the Department of Health shall be paid from the moneys received.

History. Acts 1981, No. 875, §§ 14, 15; A.S.A. 1947, §§ 72-1214, 72-1215; Acts 1991, No. 1217, § 1; 1997, No. 840, § 6; 1999, No. 1461, § 8; 2015, No. 1020, § 12; 2019, No. 315, § 1531.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(2).

SUBCHAPTER 3 — REGISTRATION

SECTION.

17-86-301. Registration required — Exemptions.

17-86-303. Massage therapist.

17-86-311. Disciplinary actions and penalties.

SECTION.

17-86-312. Fees.

17-86-314. Active military duty licensure.

17-86-301. Registration required — Exemptions.

(a) It shall be unlawful:

(1)(A) For any person who does not hold a valid license to use the following titles: massage therapist, massage practitioner, myotherapist, massotherapist, massage technologist, masseur, masseuse, therapy technologist, master massage therapist, massage therapy instructor, or any derivation of those titles or to advertise such titles; or

(B) For any person who does not hold the applicable license issued by the Department of Health to engage professionally for payment, barter, donation, or exchange in the practice or instruction of massage therapy as defined in this chapter;

(2) For any person to operate or conduct any massage therapy clinic or massage therapy school which does not conform to the sanitary rules contained in § 17-86-302, in state law, in local ordinances, or in those rules which may be adopted by the State Board of Health;

(3) To employ any person to practice or instruct under this chapter who does not hold a valid license issued by the department;

(4) For any person to operate a massage therapy school or clinic without its first being registered under the provisions of this chapter as a licensed massage therapy school or registered clinic; or

(5) For the department or other individual or entity to incorporate privileges or certification requirements of any private organization, private professional association, or private accrediting agency within Arkansas massage laws or its rules. However, the department may adopt as its licensure exam an exam drafted and administered by a private organization, private professional association, or private accreditation agency.

(b) Exemptions:

(1) Persons authorized by the laws of this state to practice medicine, osteopathy, podiatry, or physical therapy, and licensed physicians' assistants, licensed nurses, licensed physical therapy assistants, licensed acupuncturists, licensed midwives, and chiropractors are exempt from this chapter in so far as massage therapy practices are offered or instructed within the scope and under the provisions of licensure;

(2) Persons authorized by the department to present and instruct department-approved school curriculum or continuing education programs, or both, may present and instruct such department-approved curriculum and programs for payment and in the presentation and

instruction may utilize practices defined in, but without being licensed or registered under, the provisions of this chapter; and

(3) The practice of massage therapy that is incidental to a program of study by students enrolled in a licensed massage therapy school approved by the department, and under direct supervision of a licensee employed as an instructor at the school, is exempt from § 17-86-311(a)(10).

(c)(1) A licensee shall notify the department in writing of any change of name, address, phone number, or place of employment.

(2) If a name change is requested, a new license shall be issued in the new name at the next renewal date or immediately for a fee not to exceed twenty dollars (\$20.00) for printing of a new license.

(3) Valid government-issued photo identification is required for each name change request.

History. Acts 1981, No. 875, §§ 3, 4; A.S.A. 1947, §§ 72-1203, 72-1204; Acts 1991, No. 1217, § 1; 1993, No. 714, § 4; 1995, No. 466, § 1; 1997, No. 840, § 7; 1999, No. 1461, § 9; 2009, No. 1305, § 4; 2015, No. 1020, § 13; 2019, No. 315, §§ 1532, 1533.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a)(2); and deleted “and regulations” following “rules” in the first sentence of (a)(5).

17-86-303. Massage therapist.

(a) In order to be licensed as a massage therapist, the person seeking licensure shall:

(1) Furnish to the Department of Health satisfactory proof that he or she is eighteen (18) years of age or older;

(2) Make oath that he or she has not been convicted of, found guilty of, or entered a plea of guilty or nolo contendere to any offense that would constitute a felony listed under § 17-3-102 or constitute the offense of prostitution, either in this state or another state, and submit a signed authorization to investigate and have information released to the department;

(3) Present the following issued in the same name as the applicant or licensee:

(A) A valid photo identification or driver's license, or both; and

(B) A Social Security card;

(4)(A) Present a high school diploma, high school equivalency diploma approved by the Adult Education Section, or college transcript and credentials issued by a massage therapy school accepted by the department or a like institution with no less than five hundred (500) hours of in-classroom instruction.

(B) An applicant shall not submit his or her transcript directly to the department.

(C) An applicant shall request that the massage therapy school submit the transcript directly to the department.

(D)(i) If the applicant's transcript is not obtainable from the original school, the applicant shall submit a statement to explain why the transcript may not be obtained.

(ii) Other documentation of credentials may be submitted and accepted for licensure at the discretion of the department;

(5) Furnish to the department satisfactory proof of passing an examination recognized and approved by the department; and

(6) Pay the specified fees, which shall accompany a completed notarized application to the department.

(b) Fees are as follows:

- (1) Application fee \$75.00 Nonrefundable
- (2) Original license fee 80.00
- (3) Biennial renewal 80.00
- (4) Examination fee or reexamination fee 25.00
- (5) Duplicate license fee 10.00
- (6) Pocket card fee not to exceed ten dollars (\$10.00).

(c) A person shall not practice massage therapy until his or her official license has been received from the department.

(d) A person who attempts to procure or does procure a license in violation of this section shall be subject to the penalties provided for in § 17-86-103.

History. Acts 1981, No. 875, §§ 7, 9; A.S.A. 1947, §§ 72-1207, 72-1209; Acts 1991, No. 1217, § 1; 1993, No. 714, § 6; 1993, No. 1219, § 26; 1997, No. 840, § 9; 1999, No. 1461, § 11; 2009, No. 1305, § 5; 2013, No. 1445, § 10; 2015, No. 1020, § 14; 2015, No. 1115, § 26; 2017, No. 252, § 13; 2019, No. 312, § 1; 2019, No. 910, § 2243; 2019, No. 990, § 71; 2021, No. 136, § 1.

Amendments. The 2019 amendment by No. 312 deleted former (a)(6), and re-designated former (a)(7) as (a)(6).

The 2019 amendment by No. 910 substituted "Adult Education Section of the Division of Workforce Services" for "Department of Career Education" in (a)(4)(A).

The 2019 amendment by No. 990 deleted "and of good moral character" following "older" in (a)(1).

The 2021 amendment, in (a)(2), inserted "listed under § 17-3-102" and substituted "or another state" for "or the United States".

17-86-311. Disciplinary actions and penalties.

(a) The Massage Therapy Technical Advisory Committee may deny, suspend, place on probation, or revoke a license upon any one (1) of the following grounds:

- (1) A felony listed under § 17-3-102 or the offense of prostitution, either in this state or another state;
- (2) Malpractice or gross incompetency;
- (3) The use in advertisements of untruthful or improbable statements or flamboyant, exaggerated, or extravagant claims concerning the licensee's professional excellence or abilities;
- (4) Habitual drunkenness or habitual use of any illegal drugs;
- (5) Serving alcoholic beverages at the clinic or school in a room where massage therapy is being performed or in a massage therapy school;
- (6) Unprofessional conduct;

(7) Failure to comply with the Department of Health's Massage Therapy Code of Ethics or any valid rule or order of the department;

(8) Invasion of the field of practice of any profession for which a license is required, the diagnosis of ailments, diseases, or injuries of human beings, the performance of osseous adjustments, prescription of medications, or other breaches of the scope of practice of massage therapy;

(9) Failure of any licensee to comply with this chapter; or

(10) Failure to have licensed personnel to perform massage therapy techniques in his or her clinic or school.

(b)(1) The State Board of Health shall establish by rule the penalty system to be imposed under this section.

(2) Whenever the committee finds that the holder of a license, certificate of registration, or other permit issued by the department is guilty of a violation of the rules of the department or the laws of the state pertaining to any occupation, profession, or business licensed or regulated by the department, the committee may impose a penalty on the licensee or permit holder in lieu of suspension or revocation of license, certificate of registration, or other permit.

(3)(A) Upon imposition of a penalty in lieu of suspension or revocation of license, certificate of registration, or other permit, the committee may require that the licensee or permit holder pay a penalty to the department.

(B) The license, certificate of registration, or permit shall be suspended until the penalty is paid.

(4)(A) The penalty may be imposed in lieu of revocation or suspension of a license, certificate, or other permit only if the committee formally finds that the public health, safety, welfare, and morals would not be impaired and that the payment of the penalty will achieve the desired disciplinary results.

(B) The minimum penalty imposed by the committee in lieu of revocation or suspension of a license, certificate, or other permit shall be twenty-five dollars (\$25.00) and the maximum penalty one thousand dollars (\$1,000) per infraction.

(C) The authority of the committee to impose penalties under this section is not affected by any other civil or criminal proceeding concerning the same violation.

(D) A person penalized by the committee under this chapter may appeal any order of the committee in the manner currently provided by law.

(E) In addition to any other sanctions authorized by this chapter, the committee may impose a civil penalty as provided in this subsection against any unlicensed person, firm, or corporation practicing or offering to practice any actions requiring licensure under this chapter.

(c)(1) The massage therapist-patient relationship is founded on mutual trust. Sexual misconduct is prohibited.

(2) The committee shall revoke the license of a person who engages in the practice of massage of the breasts unless the massage therapist:

(A) Engages in the practice of massage of the breasts for therapeutic and medical purposes including without limitation the reduction of scar tissue following a surgery on the breast, release of myofascial binding, or improving lymphatic flow; and

(B) Has received at least forty-eight (48) hours of continuing education credits in lymphatic massage, myofascial massage, or oncology massage.

(3) A suspension of a license under subdivisions (c)(1) and (2) of this section shall be for a period of three (3) years.

(d)(1) Charges may be brought by any person.

(2) Any accusation of any of the offenses enumerated in this section may be filed with the committee. The accusations shall be in writing, signed by the accuser, and verified under oath.

(e) In denying, suspending, or revoking any license, the committee shall afford any party review as provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and as otherwise provided by the rules of the State Board of Health.

History. Acts 1981, No. 875, § 12; A.S.A. 1947, § 72-1212; Acts 1991, No. 1217, § 1; 1993, No. 714, § 14; 1997, No. 840, § 17; 1999, No. 1461, § 19; 2009, No. 1305, § 12; 2013, No. 1445, §§ 18-20; 2015, No. 1020, § 27; 2019, No. 315, §§ 1534, 1535; 2019, No. 386, § 38; 2019, No. 990, § 72; 2021, No. 136, § 2.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (a)(7); and deleted “and regulations” following “rules” in (e).

The 2019 amendment by No. 386, in (a)(7), substituted “rule” for “regulation”,

and substituted “department” for “committee”.

The 2019 amendment by No. 990 substituted “A felony listed under § 17-3-102” for “Conviction of, finding of guilt, or entry of a plea of guilty or nolo contendere to a felony, Class A misdemeanor, or prostitution” in (a)(1); and substituted “Unprofessional” for “Moral turpitude or immoral or unprofessional” in (a)(6).

The 2021 amendment added “or the offense of prostitution, either in this state or another state” in (a)(1).

17-86-312. Fees.

(a) All registration fees and other fees due the Department of Health shall be paid in accordance with the provisions of this chapter and all other laws and rules of this state.

(b)(1) The initial inspection fee for a massage therapy school shall not exceed one hundred dollars (\$100).

(2) The annual renewal and inspection fee for a massage therapy school shall not exceed one hundred dollars (\$100).

(3) A licensee whose massage therapy school license renewal is postmarked after April 30 of each year shall pay a late fee not to exceed five hundred dollars (\$500).

History. Acts 1981, No. 875, § 9; A.S.A. 1947, § 72-1209; Acts 1991, No. 1217, § 1; 1997, No. 840, § 18; 2013, No. 1445, § 21; 2015, No. 1020, § 28; 2019, No. 315, § 1536.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a).

17-86-314. Active military duty licensure.

(a) If a licensee fails to renew timely his or her license because the licensee is or was on active duty with the United States Armed Forces or on state active duty with the Arkansas National Guard, the licensee may renew the license by:

(1) Requesting renewal of the license before or after the expiration by:

(A) The licensee;

(B) The licensee's spouse; or

(C)(i) The licensee's power of authority.

(ii) A copy of the power of authority documentation shall be filed with the renewal form if the power of authority requests the renewal;

(2) Completing the appropriate renewal form, including the current address and telephone number for the individual requesting the renewal; and

(3) Filing with the renewal form a copy of the official orders or other official military documentation showing that the licensee is or was on active duty.

(b) A licensee renewing under this section shall pay the applicable renewal fee under § 17-86-309 but shall not pay a late renewal fee.

History. Acts 2015, No. 1083, § 5; inserted "or on state active duty with the 2019, No. 462, § 14. Arkansas National Guard" in the intro-

Amendments. The 2019 amendment ductory language of (a).

CHAPTER 87**NURSES****SUBCHAPTER.**

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF NURSING.
3. LICENSING.
4. EDUCATIONAL PROGRAMS.
6. INTERSTATE NURSE LICENSURE COMPACT.
7. MEDICATION ASSISTIVE PERSONS.

SUBCHAPTER 1 — GENERAL PROVISIONS**SECTION.**

- 17-87-102. Definitions.
17-87-103. Exceptions — Definitions.

SECTION.

- 17-87-104. Penalty.

17-87-102. Definitions.

As used in this chapter:

(1) "Board" means the Arkansas State Board of Nursing;

(2) "Collaborative practice agreement" means a written plan that identifies a physician who agrees to collaborate with an advanced practice registered nurse in the joint management of the health care of the advanced practice registered nurse's patients and that outlines

procedures for consultation with or referral to the collaborating physician or other healthcare professional as indicated by a patient's healthcare needs;

(3) "Consulting physician" means a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., with obstetrical privileges in a hospital, who has agreed to practice in consultation with a certified nurse midwife;

(4)(A) "Practice of advanced practice registered nursing" means the delivery of healthcare services for compensation by a professional nurse who has gained additional knowledge and skills through successful completion of an organized program of nursing education that certifies nurses for advanced practice roles as certified nurse practitioners, certified registered nurse anesthetists, certified nurse midwives, and clinical nurse specialists.

(B) "Practice of advanced practice registered nursing" includes the practice of nursing as a:

- (i) Certified nurse practitioner;
- (ii) Certified registered nurse anesthetist;
- (iii) Certified nurse midwife; and
- (iv) Clinical nurse specialist;

(5) "Practice of certified nurse midwifery" means the performance for compensation of advanced nursing practices by a certified nurse midwife that are relevant to the management of women's health care, focusing on pregnancy, childbirth, the postpartum period, care of the newborn, family planning, and gynecological needs of women within a healthcare system that provides for consultation, collaborative management, or referral as indicated by the health status of the client;

(6) "Practice of certified nurse practitioner nursing" means the performance for compensation of advanced nursing practices by a registered nurse who, as demonstrated by national certification, has advanced knowledge and practice skills in the delivery of nursing services;

(7)(A) "Practice of certified registered nurse anesthesia" means the performance for compensation of advanced nursing practices by a certified registered nurse anesthetist that are relevant to the administration of anesthetics in consultation with, but not necessarily in the presence of, a licensed physician, licensed dentist, or other person lawfully entitled to order anesthesia.

(B)(i) A certified registered nurse anesthetist may order nurses, within his or her scope of practice, to administer drugs preoperatively and postoperatively in connection with an anesthetic or other operative or invasive procedure, or both, that will be or has been provided.

(ii) A certified registered nurse anesthetist may select, obtain, and administer Schedule II drugs only during the perioperative, peribobstetrical, and medical procedure period.

(C) As used in this subdivision (7):

(i)(a) "Consultation" means the manner and process utilized between a certified registered nurse anesthetist and a licensed physi-

cian, licensed dentist, or other person lawfully entitled to order anesthesia performing the procedure or directly involved with the procedure when working jointly toward a common goal of providing services for the patient.

(b) In consultation, the consulting party shall remain immediately available for consultation during the delivery of anesthesia for diagnosis, consultation, and treatment of medical conditions.

(c) The hospital's administrative staff, medical staff, and governing body shall determine the guidelines on "immediately available for consultation";

(ii) "Medical procedure" means a course of action intended to achieve a result in the delivery of health care as consulted by a licensed physician, licensed dentist, or other person lawfully entitled to order anesthesia;

(iii) "Peri-obstetrical" means preanesthetic preparation or evaluation, anesthesia induction, maintenance or emergence, or postanesthesia care of the pregnant female; and

(iv) "Perioperative" means preanesthetic preparation or evaluation, anesthesia induction, maintenance or emergence, or postanesthesia care of clients.

(D) For purposes of this subdivision (7), a licensed physician, licensed dentist, or other person lawfully entitled to order anesthesia is not liable for any act or omission of a certified registered nurse anesthetist who orders or administers anesthetics;

(8) "Practice of clinical nurse specialist nursing" means the performance for compensation of advanced nursing practices by a registered nurse who, through study and supervised practice at the graduate level and as evidenced by national certification, has advanced knowledge and practice skills in a specialized area of nursing practice;

(9) "Practice of licensed practical nursing" means the performance for compensation of nursing practices by a licensed practical nurse that are relevant to the care of the ill, injured, or infirm, or the delegation of certain nursing practices to other personnel as set forth in rules established by the board, under the direction of a registered nurse, an advanced practice registered nurse, a licensed physician, or a licensed dentist that do not require the substantial specialized skill, judgment, and knowledge required in professional nursing;

(10) "Practice of professional nursing" means the performance by a registered nurse or an advanced practice registered nurse for compensation of any acts involving:

(A) The observation, care, and counsel of the ill, injured, or infirm;

(B) The maintenance of health or prevention of illness of others;

(C) The supervision and teaching of other personnel;

(D) The delegation of certain nursing practices to other personnel as set forth in rules established by the board; or

(E) The administration of medications and treatments as prescribed by practitioners authorized to prescribe and treat in accordance with state law when such acts require substantial specialized

judgment and skill based on knowledge and application of the principles of biological, physical, and social sciences;

(11) "Practice of psychiatric technician nursing" means the performance for compensation of nursing practices by a licensed psychiatric technician nurse that are relevant to the care of the physically and mentally impaired, injured, or infirm or the delegation of certain nursing practices to other personnel as set forth in rules established by the board, and the carrying out of medical orders under the direction of a professional registered nurse, an advanced practice registered nurse, a licensed physician, or a licensed dentist, when such activities do not require the substantial specialized skill, judgment, and knowledge required in professional nursing; and

(12)(A) "Practice of registered nurse practitioner nursing" means the performance for compensation of nursing practices by a registered nurse practitioner that are relevant to the delivery of healthcare services in collaboration with and under the direction of a licensed physician or under the direction of protocols developed with a licensed physician.

(B) A registered nurse practitioner is authorized to engage in nursing practices as recognized by the nursing profession and as authorized by the board.

History. Acts 1971, No. 432, § 2; 1979, No. 404, §§ 1, 7; 1979, No. 613, § 2; A.S.A. 1947, § 72-746; Acts 1995, No. 409, § 2; 1997, No. 1065, § 1; 1999, No. 1208, § 1; 2013, No. 604, § 2; 2015, No. 1156, § 14; 2019, No. 315, §§ 1537-1539; 2021, No. 449, § 1.

A.C.R.C. Notes. Acts 2021, No. 449, § 2, provided: "Construction. This act does not limit and should not be interpreted to limit the right or authority, or

both, of the healthcare facility to choose an anesthesia practice model."

Amendments. The 2019 amendment substituted "rules" for "regulations" in (9), (10)(D), and (11).

The 2021 amendment substituted "in consultation with" for "under the supervision of" in (7)(A); added (7)(B)(ii) and redesignated former (7)(B) as (7)(B)(i); and added (7)(C) and (7)(D).

17-87-103. Exceptions — Definitions.

This chapter does not prohibit:

- (1) The furnishing of nursing assistance in an emergency;
- (2) The practice of nursing that is incidental to their program of study by students enrolled in nursing education programs approved by the Arkansas State Board of Nursing;
- (3) The practice of any legally qualified nurse of another state who is employed by the United States Government or any bureau, division, or agency while in the discharge of his or her official duties in installations where jurisdiction has been ceded by the State of Arkansas;
- (4) The practice of any legally qualified and licensed nurse of another state, territory, or foreign country whose responsibilities include transporting patients into, out of, or through this state while actively engaged in patient transport that does not exceed forty-eight (48) hours in this state;

(5) Nursing or care of the sick when done in connection with the practice of the religious tenets of any church by its adherents;

(6) The care of the sick when done in accordance with the practice of religious principles or tenets of any well-recognized church or denomination that relies upon prayer or spiritual means of healing;

(7) The administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, dentist, or other person lawfully entitled to order anesthesia by a graduate nurse anesthetist awaiting certification results while holding a temporary permit;

(8) The administration of anesthetics under the supervision of, but not necessarily in the presence of, a licensed physician, dentist, or other person lawfully entitled to order anesthesia by a registered nurse who is enrolled as a bona fide student pursuing a course in a nurse anesthesia school that is approved by a nationally recognized accrediting body and whose graduates are acceptable for certification by a nationally recognized certifying body, provided the giving or administering of the anesthetics is confined to the educational requirements of the course and under the direct supervision of a qualified instructor;

(9) Hospital-employed professional paramedics from administering medication for diagnostic procedures under the direction of a physician;

(10) The prescription and administration of drugs, medicines, or therapeutic devices in the presence of and under the supervision of an advanced practice registered nurse holding a certificate of prescriptive authority, a licensed physician, or licensed dentist by a registered nurse who is enrolled as a student in an advanced pharmacology course, provided the prescription or administration of drugs or medicines, or both, is confined to the educational requirements of the course and under the direct supervision of a qualified instructor;

(11)(A) The administration of glucagon or insulin, or both, to a student who is diagnosed with diabetes by trained volunteer school personnel designated as care providers in a health plan that covers diabetes management and is based on the orders of a treating physician, who have been trained by a licensed registered nurse employed by a school district or other healthcare professional to administer glucagon or insulin, or both, to a child with diabetes in an emergency situation.

(B)(i) A licensed registered nurse employed by a school district or other healthcare professional shall annually train volunteer school personnel designated as care providers in a health plan of a student submitted under subdivision (11)(A) of this section to administer glucagon or insulin, or both, to a student with diabetes.

(ii) If a parent or guardian of a student with diabetes chooses to have care provided by a care provider, the parent or guardian of a student with diabetes shall sign an authorization to allow the administration of glucagon or insulin, or both, to the student by volunteer school personnel designated as care providers who shall be incorporated into the health plan of a student submitted under subdivision (11)(A) of this section.

(iii) The school district shall maintain a copy of the health plan provided under subdivision (11)(A) of this section, a list of volunteer school personnel who are designated as care providers and trained to administer glucagon or insulin, or both, and a copy of the parent's or guardian's signed authorization.

(C)(i) A school district shall strive to achieve the following staffing ratios for students with diabetes at each public school, at least:

(a) One (1) care provider for a public school with one (1) full-time licensed registered nurse; and

(b) Three (3) care providers for a public school without one (1) full-time licensed registered nurse.

(ii) The school district may recruit and identify public school personnel to serve as care providers to administer glucagon or insulin, or both, when a licensed registered nurse is not available.

(iii) A school district shall not require or pressure a parent or guardian of a student with diabetes to provide diabetes care at school or a school-related activity.

(D) A school district, school district employee, or an agent of a school district, including a healthcare professional who trained volunteer school personnel designated as care providers and a care provider, shall not be liable for any damages resulting from his or her actions or inactions under this section.

(E) The Arkansas State Board of Nursing and the State Board of Education shall promulgate rules necessary to administer this subdivision (11);

(12)(A) Health maintenance activities by a designated care aide for a:

(i) Competent adult at the direction of the adult; or

(ii) Minor child or incompetent adult at the direction of a caretaker.

(B) As used in this section:

(i) "Caretaker" means a person who is:

(a) Directly and personally involved in providing care for a minor child or incompetent adult; and

(b) The parent, foster parent, family member, friend, or legal guardian of the minor child or incompetent adult receiving care under subdivision (12)(B)(i)(a) of this section;

(ii) "Competent adult" means an individual who:

(a) Is eighteen (18) years of age or older; and

(b) Has the capability and capacity to make an informed decision; and

(iii) "Health maintenance activities" means activities that:

(a) Enable a minor child or adult to live in his or her home; and

(b) Are beyond activities of daily living that:

(1) The minor child or adult is unable to perform for himself or herself; and

(2) The attending physician, advanced practice registered nurse, or registered nurse determines can be safely performed in the minor

child's or adult's home by a designated care aide under the direction of a competent adult or caretaker.

(C) As used in this section, "home" does not include:

- (i) A nursing home;
- (ii) An assisted living facility;
- (iii) A residential care facility;
- (iv) An intermediate care facility; or
- (v) A hospice care facility.

(D) The Arkansas State Board of Nursing, with the input of the Arkansas Health Care Association and the Arkansas Residential Assisted Living Association, Inc., shall promulgate rules specifying which health maintenance activities are not exempted under this subdivision (12) and the minimal qualifications required of the designated care aide;

(13) The practice of nursing through a program in partnership with federal Innovative Readiness Training if the nurse has obtained a license to practice from another state, commonwealth, territory, or the District of Columbia;

(14)(A) The drawing and measuring of glucagon or insulin, or both, by a trained employee of a city or county detention center for a person who:

- (i) Is currently incarcerated or otherwise in custody of the city or county detention center; and
- (ii) Has a confirmed diagnosis of diabetes.

(B) The drawing and measuring of glucagon or insulin shall be based on the orders of a treating licensed medical professional with prescribing privileges, and the employee of the county jail or detention center shall be trained in accordance with subdivision (14)(C) of this section.

(C) A licensed registered nurse or other healthcare professional who is an employee or independent contractor of the city or county detention center shall annually train employees designated by the city or county detention center as employees who may draw or measure glucagon or insulin in accordance with this subdivision (14); or

(15)(A) The administration of an emergency dose medication to a public school student who is diagnosed with an adrenal insufficiency by volunteer public school personnel if the public school personnel are trained to administer an emergency dose medication using the appropriate delivery equipment when a public school nurse is unavailable.

(B) The administration of an emergency dose medication to a public school student with an adrenal insufficiency by trained public school personnel at school, on school grounds, or at a school-related activity may be permitted with the authorization of the parent, legal guardian, or person standing in loco parentis of the public school student if the public school student's parent, legal guardian, or person standing in loco parentis provides written authorization for

trained public school personnel to administer an emergency dose medication while the public school student is at public school, an on-site school-related activity, or an off-site school-sponsored activity.

(C) The written authorization provided under subdivision (15)(B) of this section shall be:

(i) Valid only for the duration of the school year for which it is provided; and

(ii) Renewed:

(a) For each subsequent school year for which the parent, legal guardian, or person standing in loco parentis intends to authorize trained public school personnel to administer an emergency dose medication to his or her child; and

(b) If the public school student transfers to another public school in this state.

(D) A parent, legal guardian, or person standing in loco parentis who provides written authorization under subdivision (15)(B) of this section shall:

(i) Include with his or her written authorization written orders from his or her public school student's treating physician that the public school student requires the administration of an emergency dose medication under certain conditions; and

(ii) Sign an individualized healthcare plan developed by the school nurse for the public school in which his or her child with an adrenal insufficiency is enrolled that outlines the plan of care for his or her child and includes without limitation a description of the required care following the administration of an emergency dose medication while the public school student is at school, an on-site school-related activity, or an off-site school-sponsored activity.

(E) A parent, legal guardian, or person standing in loco parentis who provides written authorization for the administration by trained public school personnel of an emergency dose medication to his or her child shall sign a statement:

(i) Acknowledging the public school district is not liable as a result of any injury arising from the administration of an emergency dose medication by trained public school personnel; and

(ii) Indemnifying and holding harmless the public school employees and public school district in which his or her child is enrolled against any claims arising as a result of the administration of an emergency dose medication by trained public school personnel.

(F) Education and training on the treatment of adrenal insufficiency and adrenal crisis shall be conducted annually to public school personnel who volunteer to administer an emergency dose medication by the school nurse for the public school at which the public school personnel are employed and shall include without limitation:

(i) General information about adrenal insufficiency and the associated triggers;

(ii) Recognition of signs and symptoms of a public school student experiencing an adrenal crisis;

(iii) The types of medications for treating adrenal insufficiency and adrenal crisis; and

(iv) The proper administration of medication used to treat an adrenal crisis.

(G) The Division of Elementary and Secondary Education shall develop guidance and education for school nurses to train volunteer public school personnel as required under this subdivision (15).

(H) The division shall, in coordination with the Arkansas State Board of Nursing, promulgate rules necessary to implement this subdivision (15).

(I) As used in this subdivision (15):

(i) "Adrenal crisis" means a sudden, severe worsening of symptoms associated with adrenal insufficiency, which can lead to circulatory collapse, heart and organ failure, brain damage, and death;

(ii)(a) "Adrenal insufficiency" means a chronic medical condition in which the adrenal glands do not produce enough of the necessary hormones to respond to stressors such as illness and injury.

(b) The hormones involved help maintain and regulate key functions of the body such as blood pressure, metabolism, the immune system, and how the body responds to stress; and

(iii) "Emergency dose medication" means intramuscular hydrocortisone sodium succinate.

History. Acts 1971, No. 432, §§ 1, 2, 17; 1979, No. 404, §§ 1, 7; 1979, No. 613, §§ 1, 2; 1980 (1st Ex. Sess.), No. 14, §§ 1, 3; 1985, No. 189, § 2; A.S.A. 1947, §§ 72-745, 72-746, 72-761; Acts 1995, No. 409, § 3; 1997, No. 1065, § 2; 2005, No. 1440, § 1; 2011, No. 1204, § 1; 2013, No. 604, §§ 3, 4; 2013, No. 1232, § 1; 2015, No.

833, § 2; 2017, No. 205, § 4; 2017, No. 540, § 28; 2021, No. 439, § 1; 2021, No. 1050, § 2.

Amendments. The 2021 amendment by No. 439 added (14).

The 2021 amendment by No. 1050 added (14) [now (15)].

17-87-104. Penalty.

(a)(1) It shall be a misdemeanor for any person to:

(A) Sell or fraudulently obtain or furnish any nursing diploma, license, renewal, or record, or aid or abet therein;

(B) Practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(C) Practice professional nursing, advanced practice nursing, registered nurse practitioner nursing, practical nursing, or psychiatric technician nursing as defined by this chapter unless licensed by the Arkansas State Board of Nursing to do so;

(D) Use in connection with his or her name any of the following titles, names, or initials, if the user is not properly licensed under this chapter:

(i) Nurse;

(ii) Registered nurse or R.N.;

(iii) Advanced practice nurse, advanced practice registered nurse, A.P.N., or A.P.R.N., or any of the following:

(a) Advanced registered nurse practitioner, certified nurse practitioner, A.R.N.P., A.N.P., or C.N.P.;

(b) Nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.;

(c) Nurse midwife, certified nurse midwife, licensed nurse midwife, C.N.M., or L.N.M.; or

(d) Clinical nurse specialist or C.N.S.;

(iv) Registered nurse practitioner, N.P., or R.N.P.;

(v) Licensed practical nurse, practical nurse, or L.P.N.;

(vi) Licensed psychiatric technician nurse, psychiatric technician nurse, L.P.T.N., or P.T.N.; or

(vii) Any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter;

(E) Practice professional nursing, advanced practice nursing, registered nurse practitioner nursing, practical nursing, or psychiatric technician nursing during the time his or her license shall be suspended;

(F) Conduct a nursing education program for the preparation of professional nurses, advanced practice registered nurses, nurse practitioners, practical nurses, or psychiatric technician nurses unless the program has been approved by the board;

(G) Prescribe any drug or medicine as authorized by this chapter unless certified by the board as having prescriptive authority, except that a certified registered nurse anesthetist shall not be required to have prescriptive authority to provide anesthesia care, including the administration of drugs or medicines necessary for the care; or

(H) Otherwise violate any provisions of this chapter.

(2) Such misdemeanor shall be punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500). Each subsequent offense shall be punishable by fine or by imprisonment of not more than thirty (30) days, or by both fine and imprisonment.

(b)(1) After providing notice and a hearing, the board may levy civil penalties in an amount not to exceed one thousand dollars (\$1,000) for each violation against those individuals or entities found to be in violation of this chapter or rules promulgated thereunder.

(2) Each day of violation shall be a separate offense.

(3) These penalties shall be in addition to other penalties which may be imposed by the board pursuant to this chapter.

(4) Unless the penalty assessed under this subsection is paid within fifteen (15) calendar days following the date for an appeal from the order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

History. Acts 1971, No. 432, § 18; 1980 § 72-762; Acts 1995, No. 409, § 4; 2013, (1st Ex. Sess.), No. 14, § 4; A.S.A. 1947, No. 604, §§ 5, 6; 2019, No. 315, § 1540.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (b)(1).

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF NURSING

SECTION.

17-87-202. Organization and proceedings.

SECTION.

17-87-203. Powers and duties.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-87-202. Organization and proceedings.

(a)(1) It shall be the duty of the Arkansas State Board of Nursing to meet regularly at least one (1) time every six (6) months for the purpose of conducting its business.

(2) Special meetings of the board may be called at any time at the pleasure of the President of the Arkansas State Board of Nursing or by the Secretary of the Arkansas State Board of Nursing on the request of any three (3) members of the board.

(3) A majority of the members shall constitute a quorum at any meeting of the board.

(4) The board shall determine by its own rules the time and manner of giving notice of meetings to its members.

(5) The giving of an examination for licensure shall not be considered as a meeting of the board.

(b) The secretary shall keep a record of the minutes of the meetings of the board, together with a record of the action of the board thereon. The records shall at all reasonable times be open for public inspection.

(c) The Department of Health shall maintain an office for the administration of the board’s business.

(d) The board shall annually elect a president, vice president, secretary, and treasurer from among its members. The president shall be a registered nurse.

(e) The Director of the Arkansas State Board of Nursing shall be a registered nurse and meet the qualifications required by the board.

History. Acts 1971, No. 432, §§ 4, 8, 9; 1979, No. 404, §§ 3, 5, 6; A.S.A. 1947, §§ 72-748, 72-752, 72-753; Acts 2003, No. 41, § 1; 2019, No. 910, § 4878.

Amendments. The 2019 amendment, in (c), substituted "The Department of

Health" for "The board" and substituted "the board's business" for "its business" in (c); designated the last sentence in (c) as present (d) and redesignated former (d) as (e); and deleted "Executive" preceding "Director" in (e).

17-87-203. Powers and duties.

The Arkansas State Board of Nursing shall have the following powers and responsibilities:

- (1)(A) Promulgate whatever rules it deems necessary for the implementation of this chapter.
- (B) No rule promulgated hereafter by the board shall be effective until reviewed by the Legislative Council and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof;
- (2) Cause the prosecution of persons violating this chapter;
- (3) Keep a record of all its proceedings;
- (4) Make an annual report to the Secretary of the Department of Health;
- (5) Employ a Director of the Arkansas State Board of Nursing, in consultation with the Secretary of the Department of Health, if the board determines it necessary for carrying out its functions;
- (6) Study, review, develop, and recommend role levels of technical classes of nursing service and practice to state and federal health agencies and to public and private administrative bodies;
- (7) Fix the time for holding its regular meetings;
- (8) Prescribe minimum standards and approve curricula for educational programs preparing persons for licensure as registered nurses, advanced practice registered nurses, registered nurse practitioner nurses, licensed practical nurses, and licensed psychiatric technician nurses;
- (9) Prescribe minimum standards and approve curricula for educational programs preparing persons for certification as medication assistive persons;
- (10) Provide for surveys of such programs at such times as it deems necessary or at the request of the schools;
- (11) Approve programs that meet the requirements of this chapter;
- (12) Deny or withdraw approval from educational programs for failure to meet prescribed standards;
- (13) Examine, certify, and renew the certification of qualified applicants for medication assistive persons;
- (14) Examine, license, and renew the licenses of qualified applicants for professional nursing, practical nursing, and psychiatric technician nursing;
- (15) License and renew the licenses of qualified applicants for registered nurse practitioner nursing and advanced practice nursing;

(16) Grant certificates of prescriptive authority to qualified advanced practice registered nurses;

(17) Convene an advisory committee as provided for in this chapter to assist with oversight of prescriptive authority;

(18) Convene an advisory committee as provided for in this chapter to assist with oversight of medication assistive persons;

(19) Establish the maximum number of medication assistive persons who may be supervised by a nurse;

(20) Conduct disciplinary proceedings as provided for in this chapter; and

(21) Promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board.

History. Acts 1971, No. 432, § 4; 1979, No. 404, § 3; A.S.A. 1947, § 72-748; Acts 1995, No. 409, § 6; 1997, No. 179, § 13; 2005, No. 1423, § 2; 2013, No. 604, §§ 9, 10; 2017, No. 820, § 9; 2019, No. 315, § 1541; 2019, No. 910, § 4879.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regula-

tions” in (1)(A) and “rule” for “regulation” in (1)(B).

The 2019 amendment by No. 910 substituted “Secretary of the Department of Health” for “Governor” in (4); and rewrote (5), which formerly read: “Employ personnel necessary for carrying out its functions”.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-87-301. Registered nurses.
- 17-87-302. Advanced practice registered nurses.
- 17-87-304. Licensed practical nurses.
- 17-87-305. Licensed psychiatric technician nurses.
- 17-87-308. Renewal of licenses.
- 17-87-309. Disciplinary actions.
- 17-87-310. Prescriptive authority.
- 17-87-312. Criminal background checks.
- 17-87-313. Licensing of noncitizens.
- 17-87-314. Full independent practice authority — Full Indepen-

SECTION.

- dent Practice Credentialing Committee —
- Members and duties —
- Definition.
- 17-87-315. Full practice authority for certified nurse midwives —
- Definition.
- 17-87-316. Fees and disposition of fees related to Full Independent Practice Credentialing Committee.

Effective Dates. Acts 2021, No. 769, § 60: July 1, 2021. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2021 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2021 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2021.”

17-87-301. Registered nurses.

(a) **QUALIFICATIONS.** Before taking the examination or before the issuance of a license by endorsement, an applicant for a license to practice professional nursing shall submit to the Arkansas State Board of Nursing written evidence, verified by oath, that the applicant:

(1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and

(2) Has completed the required approved professional nursing education program.

(b) **ISSUANCE OF LICENSE.** A license to practice as a registered nurse may be issued:

(1) **BY EXAMINATION.** The applicant shall be required to pass an examination in such subjects as the board may determine. Upon successfully passing the examination, the board shall issue to the applicant a license to practice professional nursing as a registered nurse; or

(2) **BY ENDORSEMENT.** The board may issue a license to practice professional nursing as a registered nurse by endorsement to an applicant who has been duly licensed as a registered nurse under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the qualifications required of registered nurses in this state at the time of graduation and if the board so recommends.

(c) **NURSES REGISTERED BEFORE MARCH 29, 1971.** Any person holding a license or certificate of registration to practice nursing as a registered nurse issued by the board which was valid on March 29, 1971, shall be deemed to be licensed as a registered nurse under the provisions of this chapter.

(d) **TITLE AND ABBREVIATION.** Any person who holds a license to practice professional nursing in this state shall have the right to use the title "registered nurse" and the abbreviation "R.N.".

History. Acts 1971, No. 432, § 10; 1979, No. 613, § 3; 1981 (1st Ex. Sess.), No. 19, §§ 1-3; A.S.A. 1947, § 72-754; Acts 1991, No. 162, § 1; 1995, No. 409, § 8; 2019, No. 990, § 73.

Amendments. The 2019 amendment deleted former (a)(1) and redesignated the remaining subdivisions accordingly.

17-87-302. Advanced practice registered nurses.

(a) **QUALIFICATIONS.** In order to be licensed as an advanced practice registered nurse, an applicant shall show evidence of education approved by the Arkansas State Board of Nursing, and national certification approved by the board under one (1) of the following roles of an advanced practice registered nurse:

(1) **CERTIFIED NURSE PRACTITIONER.** A certified nurse practitioner shall hold current certification by a national certifying body recognized by

the board in the advanced practice registered nurse role and population foci appropriate to educational preparation;

(2) **CERTIFIED REGISTERED NURSE ANESTHETIST.** To qualify as a certified registered nurse anesthetist, an applicant shall:

(A) Have earned a diploma or certificate evidencing satisfactory completion, beyond generic nursing preparation, of a formal educational program that meets the standards of the Council on Accreditation of Nurse Anesthesia Educational Programs or another nationally recognized accrediting body and that has as its objective the preparation of nurses to perform as nurse anesthetists; and

(B) Hold current certification by a national certifying body recognized by the board in the advanced practice registered nurse role and population foci appropriate to educational preparation;

(3) **CERTIFIED NURSE MIDWIFE.** To qualify as a certified nurse midwife, an applicant shall:

(A) Hold current certification by a national certifying body recognized by the board in the advanced practice registered nurse role and population foci appropriate to educational preparation; and

(B) Have full practice authority under § 17-87-315; or

(4) **CLINICAL NURSE SPECIALIST.** In order to qualify as a clinical nurse specialist, an applicant shall:

(A) Hold a master's degree evidencing successful completion of a graduate program in nursing, which shall include supervised clinical practice and classroom instruction in a nursing specialty; and

(B) Hold current certification by a national certifying body recognized by the board in the advanced practice registered nurse role and population foci appropriate to educational preparation.

(b) **ISSUANCE OF LICENSE.** A license to practice as an advanced practice registered nurse may be issued:

(1) **BY APPLICATION.** Any person holding a license to practice as a registered nurse and meeting the educational qualifications and certification requirements to be licensed as an advanced practice registered nurse, upon application and payment of necessary fees to the board, may be licensed as an advanced practice registered nurse; and

(2) **BY ENDORSEMENT.** The board may issue a license to practice advanced practice registered nursing by endorsement to any applicant who has been licensed as an advanced practice registered nurse or to a person entitled to perform similar services under a different title under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the requirements for advanced practice registered nurses in this state.

(c) **TITLE AND ABBREVIATION.** Any person who holds a license to practice as an advanced practice registered nurse shall have the right to use the title of "advanced practice registered nurse" and the abbreviation "A.P.R.N.".

746, 72-756.1, 72-756.2; Acts 1995, No. 409, § 9; 1999, No. 1208, § 2; 2013, No. 604, § 12; 2021, No. 607, § 1.

Amendments. The 2021 amendment substituted “full practice authority under § 17-87-315” for “an agreement with a consulting physician if providing intrapartum care” in (a)(3)(B).

17-87-304. Licensed practical nurses.

(a) **QUALIFICATIONS.** An applicant for a license to practice practical nursing shall submit to the Arkansas State Board of Nursing evidence, verified by oath, that the applicant:

(1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and

(2) Has completed a prescribed curriculum in a state-approved program for the preparation of practical nurses and holds a diploma or certificate therefrom. However, the board may waive this requirement if the board determines the applicant to be otherwise qualified.

(b) **ISSUANCE OF LICENSE.** A license to practice as a practical nurse may be issued:

(1) **BY EXAMINATION.** The applicant shall be required to pass an examination in such subjects as the board may determine. Upon successful completion of the examination, the board shall issue to the applicant a license to practice as a licensed practical nurse; or

(2) **BY ENDORSEMENT.** The board may issue a license to practice practical nursing by endorsement to any applicant who has duly been licensed or registered as a licensed practical nurse or to a person entitled to perform similar services under a different title under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the requirements for licensed practical nurses in this state at the time of graduation and if the board so recommends.

(c) **PERSON LICENSED BEFORE MARCH 29, 1971.** Any person holding a license to practice as a practical nurse issued by the board and which was valid on March 29, 1971, shall be deemed to be licensed as a practical nurse under the provisions of this chapter.

(d) **TITLE AND ABBREVIATION.** Any person who holds a license to practice practical nursing in this state shall have the right to use the title “licensed practical nurse” and the abbreviation “L.P.N.”

(e) **EDUCATIONAL PROGRAM.** The educational program for the preparation of licensed practical nurses may be provided by a postsecondary educational institution, a hospital, or a consortium of five (5) or more skilled nursing facilities.

History. Acts 1971, No. 432, § 11; 1981, No. 54, § 1; 1981 (1st Ex. Sess.), No. 19, §§ 4, 5; A.S.A. 1947, § 72-755; Acts 1991, No. 162, § 2; 1995, No. 409, § 10; 2019, No. 990, § 74; 2021, No. 759, § 1.

Amendments. The 2019 amendment deleted former (a)(1) and redesignated the remaining subdivisions accordingly. The 2021 amendment added (e).

17-87-305. Licensed psychiatric technician nurses.

(a) **QUALIFICATIONS.** An applicant for a license to practice psychiatric technician nursing shall submit to the Arkansas State Board of Nursing evidence, verified by oath, that the applicant:

(1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and

(2) Has completed a prescribed curriculum in a state-approved program for the preparation of psychiatric technician nurses and holds a diploma or certificate therefrom. However, the board may waive this requirement if the board determines the applicant to be otherwise qualified.

(b) **ISSUANCE OF LICENSE.** A license to practice as a psychiatric technician nurse may be issued:

(1) **BY EXAMINATION.** The applicant shall be required to pass a written examination in such subjects as the board may determine. Each written examination may be supplemented by an oral examination. Upon successfully passing the examination, the board shall issue to the applicant a license to practice as a psychiatric technician nurse. All such examinations shall be conducted by an examiner, who shall be a registered nurse, and by an assistant examiner, who shall be a licensed psychiatric technician nurse; or

(2) **BY ENDORSEMENT.** The board may issue a license to practice psychiatric technician nursing by endorsement to an applicant who has duly been licensed or registered as a licensed psychiatric technician nurse or a person entitled to perform similar services under a different title under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the requirements for licensed psychiatric technician nurses in this state at the time of graduation and if the board so recommends.

(c) **PERSON LICENSED BEFORE MARCH 29, 1971.** Any person holding a license to practice as a psychiatric technician issued by the board in accordance with Acts 1953, No. 124 [repealed], and which was valid on March 29, 1971, shall be deemed to be licensed as a psychiatric technician nurse under the provisions of this chapter.

(d) **TITLE AND ABBREVIATION.** Any person who holds a license to practice psychiatric technician nursing in this state shall have the right to use the title "licensed psychiatric technician nurse" and the abbreviation "L.P.T.N."

History. Acts 1971, No. 432, § 12; 1981, No. 54, § 2; 1981 (1st Ex. Sess.), No. 19, §§ 6, 7; A.S.A. 1947, § 72-756; Acts 1995, No. 409, § 11; 2019, No. 990, § 75.

Amendments. The 2019 amendment deleted former (a)(1) and redesignated the remaining subdivisions accordingly.

17-87-308. Renewal of licenses.

(a)(1) The Arkansas State Board of Nursing shall prescribe the procedure for the cyclical biennial renewal of licenses to every person licensed by the board.

(2) In each case, the board shall mail a notification for renewal to the licensee at least thirty (30) days before the expiration date of the license.

(b) Upon receipt of the application and the fee, the board shall verify the accuracy of the application and renew the license for a period to expire on the last day of the current biennial cycle.

(c) The renewal shall render the holder a legal practitioner of nursing for the period stated in subsection (b) of this section.

(d) Any licensee who allows his or her license to lapse by failing to renew the license as provided in this section may be reinstated by the board on payment of the renewal fee plus a penalty.

(e) Any person practicing nursing during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter.

(f)(1)(A) An individual may place his or her license on inactive status with written notification to the board.

(B) The holder of an inactive license shall not practice nursing in this state.

(2)(A) The provisions relating to the denial, suspension, and revocation of a license shall be applicable to an inactive or lapsed license.

(B) When proceedings to suspend or revoke an inactive license or otherwise discipline the holder of an inactive license have been initiated, the license shall not be reinstated until the proceedings have been completed.

(3) An inactive license may be placed in an active status upon compliance with the rules established by the board.

(g) As a condition of licensure renewal, an advanced practice registered nurse shall submit proof of current national certification and successful completion of continuing education as required by the board.

(h) The board shall waive the renewal fee of a nurse who:

(1) Holds a license to practice nursing in the State of Arkansas; and

(2) Is an active duty member of the United States Armed Forces or a member of the Arkansas National Guard on state active duty.

History. Acts 1971, No. 432, § 13; 1981 (1st Ex. Sess.), No. 19, § 9; A.S.A. 1947, § 72-757; Acts 1987, No. 147, § 1; 1995, No. 409, § 14; 1997, No. 179, § 14; 2005, No. 61, § 1; 2013, No. 604, § 14; 2017, No. 204, § 4; 2019, No. 462, § 15.

Amendments. The 2019 amendment, in (h)(2), substituted "United States Armed Forces or a member of the Arkansas National Guard on state active duty" for "member of the military"; and made a stylistic change.

17-87-309. Disciplinary actions.

(a) The Arkansas State Board of Nursing shall have sole authority to deny, suspend, revoke, or limit any license or privilege to practice

nursing or certificate of prescriptive authority issued by the board or applied for in accordance with the provisions of this chapter or to otherwise discipline a licensee upon proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing or is engaged in the practice of nursing without a valid license;

(2) Is guilty of a crime or gross immorality;

(3) Is unfit or incompetent by reason of negligence, habits, or other causes;

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs;

(5) Is mentally incompetent;

(6) Is guilty of unprofessional conduct;

(7) Has had a license, privilege to practice, certificate, or registration revoked or suspended or has been placed on probation or under disciplinary order in any jurisdiction;

(8) Has voluntarily surrendered a license, privilege to practice, certification, or registration and has not been reinstated in any jurisdiction; or

(9) Has willfully or repeatedly violated any of the provisions of this chapter.

(b) The board shall refuse to issue or shall revoke the license of any person who is found guilty of or pleads guilty or nolo contendere to any offense listed in § 17-3-102, unless the person requests and the board grants a waiver pursuant to § 17-3-102.

(c) Proceedings under this section shall be as provided in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1971, No. 432, § 16; A.S.A. 1947, § 72-760; Acts 1995, No. 409, § 15; 1999, No. 1208, § 3; 2001, No. 212, § 1; 2007, No. 207, § 1; 2021, No. 476, § 2.

Amendments. The 2021 amendment, in (b), substituted the first occurrence of “§ 17-3-102” for “§ 17-87-312(e)” and the second occurrence for “§ 17-87-312(g)”.

17-87-310. Prescriptive authority.

(a) The Arkansas State Board of Nursing may grant a certificate of prescriptive authority to an advanced practice registered nurse who:

(1) Submits proof of successful completion of an Arkansas State Board of Nursing-approved advanced pharmacology course that shall include preceptorial experience in the prescription of drugs, medicines, and therapeutic devices; and

(2) Has either:

(A) A certificate of full independent practice authority under § 17-87-314; or

(B) A collaborative practice agreement with a practicing physician who is licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., or a podiatrist licensed by the Arkansas Board of Podiatric Medicine under § 17-96-101 et seq., if employed by the podiatrist, and who has

training in scope, specialty, or expertise to that of the advanced practice registered nurse on file with the Arkansas State Board of Nursing.

(b)(1) An advanced practice registered nurse with a certificate of prescriptive authority may receive and prescribe drugs, medicines, or therapeutic devices appropriate to the advanced practice registered nurse's area of practice in accordance with rules established by the Arkansas State Board of Nursing.

(2)(A) An advanced practice registered nurse's prescriptive authority shall extend only to drugs listed in Schedules III — V and, if expressly authorized by the collaborative practice agreement, also to those hydrocodone combination products reclassified from Schedule III to Schedule II as of October 6, 2014.

(B) An advanced practice registered nurse's prescriptive authority also extends to drugs listed in Schedule II if:

(i) The prescription is for an opioid and the prescription is only for a five-day period or less; or

(ii)(a) The prescription is for a stimulant.

(b) A prescription for a stimulant shall meet the following criteria:

(1) The prescription was originally initiated by a physician;

(2) The physician has evaluated the patient within six (6) months before the advanced practice registered nurse issues a prescription; and

(3) The prescription by the advanced practice registered nurse is to treat the same condition as the original prescription.

(3)(A) The Arkansas State Board of Nursing shall promptly adopt rules applicable to an advanced practice registered nurse that are consistent with the Arkansas State Medical Board's rules governing the prescription of dangerous drugs and controlled substances.

(B) Before approval of the Arkansas State Board of Nursing's rules, the Arkansas State Medical Board shall review the proposed rules and verify that the proposed rules are consistent with the Arkansas State Medical Board's rules concerning the prescription of dangerous drugs and controlled substances.

(c) A collaborative practice agreement shall include, but not be limited to, provisions addressing:

(1) The availability of the collaborating physician for consultation or referral, or both;

(2) Methods of management of the collaborative practice, which shall include protocols for prescriptive authority;

(3) Coverage of the healthcare needs of a patient in the emergency absence of the advanced practice registered nurse or physician; and

(4) Quality assurance.

(d) If a collaborative practice results in complaints of violations of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., the Arkansas State Medical Board may review the role of the physician in the collaborative practice to determine if the physician is unable to manage his or her responsibilities

under the agreement without an adverse effect on the quality of care of the patient.

(e) If a collaborative practice results in complaints of violations of this chapter, the Arkansas State Board of Nursing may review the role of the advanced practice registered nurse in the collaborative practice to determine if the nurse is unable to manage his or her responsibilities under the agreement without an adverse effect on the quality of care of the patient.

History. Acts 1995, No. 409, § 16; 2013, No. 604, § 15; 2015, No. 529, § 1; 2015, No. 824, § 1; 2019, No. 308, § 1; 2019, No. 593, § 1; 2021, No. 412, § 3; 2021, No. 476, § 3.

A.C.R.C. Notes. Acts 2021, No. 412, § 1, provided: "Legislative intent. It is the intent of the General Assembly to:

"(1) Provide a legitimate pathway to full practice authority for certified nurse practitioners; and

"(2) Reevalue the composition of the Full Independent Practice Credentialing Committee in three (3) years."

Amendments. The 2019 amendment

by No. 308 inserted "or a podiatrist licensed by the Arkansas Board of Podiatric Medicine under § 17-96-101 et seq., if employed by the podiatrist" in (a)(2).

The 2019 amendment by No. 593 redesignated (b)(2) as (b)(2)(A); added (b)(2)(B); and substituted "advanced" for "advance" in (b)(3)(A).

The 2021 amendment by No. 412 added the introductory language in (a)(2), added (a)(2)(A), and redesignated the former provisions of (a)(2) as (a)(2)(B).

The 2021 amendment by No. 476 rewrote (b)(2)(B)(ii).

17-87-312. Criminal background checks.

(a)(1) Each first-time applicant for a license issued by the Arkansas State Board of Nursing shall apply to the Identification Bureau of the Division of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(2) At the time a person applies to an Arkansas nursing educational program, the program shall notify the applicant in writing of the provisions and requirements of this section.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Division of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the board all releasable information obtained concerning the applicant.

(e) For purposes of this section, the board shall follow the licensing restrictions based on criminal records under § 17-3-102.

(f)(1) The board may issue a nonrenewable temporary permit for licensure to a first-time applicant pending the results of the criminal background check.

(2) The permit shall be valid for no more than six (6) months.

(g)(1) Any information received by the board from the Identification Bureau of the Division of Arkansas State Police under this section shall not be available for examination except by:

(A) The affected applicant for licensure or his or her authorized representative; or

(B) The person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Division of Arkansas State Police.

(h) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(i) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(j) The board shall adopt the necessary rules to fully implement the provisions of this section.

(k)(1) The board may participate at the state and federal level in programs that provide notification of an arrest subsequent to an initial background check that is conducted through available governmental systems.

(2) The board may submit an applicant's fingerprints to the federal Next Generation Identification system.

(3) The fingerprints may be searched by future submissions to the Next Generation Identification system, including latent fingerprint searches.

(4) An applicant enrolled in the Next Generation Identification system is not required to re-fingerprint when a subsequent request for a state or federal criminal history background check is required if:

(A) A legible set of the applicant's fingerprints is obtained when the applicant enrolls in the Next Generation Identification system; and

(B) The applicant is subject to the Rap Back service of the Next Generation Identification system.

(l) The Identification Bureau of the Division of Arkansas State Police and the Federal Bureau of Investigation may maintain fingerprints in the Integrated Automated Fingerprint Identification System.

History. Acts 1999, No. 1208, § 4; 2001, No. 303, §§ 2-4; 2003, No. 103, §§ 1, 2; 2003, No. 1087, § 15; 2003, No. 1386, § 1; 2003, No. 1449, § 1; 2005, No. 1923, § 2; 2011, No. 570, § 121; 2013, No. 302, § 1; 2015, No. 1047, § 1; 2017, No. 367, §§ 17, 18; 2017, No. 492, § 1; 2017, No. 664, §§ 11, 12; 2019, No. 315, § 1542; 2019, No. 626, § 1; 2019, No. 990, § 76.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (k) [now (j)].

The 2019 amendment by No. 626 added (m) and (n) [now (k) and (l)].

The 2019 amendment by No. 990, in (d), inserted "releasable" and deleted "in the commission of any offense listed in subsection (c) of this section" following "applicant"; rewrote (e); deleted the (f)(1)(A) designation; redesignated (f)(1)(B) as (f)(2); deleted former (f)(2) and (g); redesignated former (h) as (g) and redesignated the remaining subsections accordingly; deleted (l); and made a stylistic change.

17-87-313. Licensing of noncitizens.

(a) The Arkansas State Board of Nursing may grant a license under this subchapter to an individual who, in addition to fulfilling the requirements to practice nursing in this state, satisfies the following requirements:

(1) The United States Department of Homeland Security has approved the individual's request for exemption under the Deferred Action for Childhood Arrivals policy;

(2) The individual's exemption status under the Deferred Action for Childhood Arrivals policy has not expired or has been properly renewed; and

(3) The individual has a current and valid employment authorization document issued by the United States Citizenship and Immigration Services.

(b) This section is a state law within the meaning of subsection (c) of 8 U.S.C. § 1621, as it existed on January 1, 2019.

(c)(1) The board shall promulgate rules under this section.

(2)(A) When adopting the initial rules to implement this section, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(i) On or before January 1, 2020; or

(ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

(B) The board shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020.

History. Acts 2019, No. 837, § 2.

A.C.R.C. Notes. Acts 2019, No. 837, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The Deferred Action for Childhood Arrivals, also known as 'DACA', is a national immigration policy that allows some individuals who are brought to the United States illegally as children to receive a renewable two-year period of deferred action from deportation and to become eligible for a work permit;

"(2) In order to be eligible under the Deferred Action for Childhood Arrivals policy, a recipient cannot have a criminal record of felonies or serious misdemeanors;

"(3) Several states allow recipients of the Deferred Action for Childhood Arrivals policy to receive occupational or professional licensure;

"(4) Arkansas has chosen not to allow recipients of the Deferred Action for Childhood Arrivals policy to receive occupational or professional licensure which has caused many students who are exempt under the Deferred Action for Childhood Arrivals policy to leave the state after completion of their vocational or professional coursework;

"(5) Arkansas is presently suffering from a nursing shortage across the state; and

"(6) It is in the best interest of the State of Arkansas to make full use of the skills and talents in the state by ensuring that an individual who is work-authorized under the Deferred Action for Childhood Arrivals policy is able to obtain an occupational or professional license and practice his or her occupation or profession.

"(b) It is the intent of this act to authorize recipients of the Deferred Action for Childhood Arrivals policy to receive a

nursing license in Arkansas.”

17-87-314. Full independent practice authority — Full Independent Practice Credentialing Committee — Members and duties — Definition.

(a) As used in this section, “full independent practice authority” means the ability of a certified nurse practitioner to practice with prescriptive authority without a collaborative practice agreement as described in § 17-87-310.

(b)(1) The Full Independent Practice Credentialing Committee may grant a certificate of full independent practice authority to a certified nurse practitioner who submits:

(A) An application;

(B) An appropriate application fee as determined by the Full Independent Practice Credentialing Committee;

(C) Proof of successful completion of six thousand two hundred forty (6,240) hours of practice under a collaborative practice agreement with a physician; and

(D) Any other relevant information as determined by the Full Independent Practice Credentialing Committee.

(2) A certificate of full independent practice authority shall be renewed every three (3) years with an appropriate renewal fee as determined by the Full Independent Practice Credentialing Committee.

(c) A certified nurse practitioner with a certificate of full independent practice authority may receive and prescribe drugs, medicines, or therapeutic devices appropriate to the certified nurse practitioner’s area of practice.

(d)(1) The Full Independent Practice Credentialing Committee is created within the Department of Health.

(2) The Full Independent Practice Credentialing Committee shall consist of the following members:

(A) The following members appointed by the Governor:

(i) Three (3) faculty physicians from each of the following institutions upon consulting with the heads of the institutions:

(a) The College of Medicine of the University of Arkansas for Medical Sciences;

(b) The Arkansas College of Osteopathic Medicine in Fort Smith; and

(c) The New York Institute of Technology College of Osteopathic Medicine at Arkansas State University in Jonesboro;

(ii) One (1) physician from the state at large;

(iii) Three (3) faculty certified nurse practitioners from nursing schools in this state upon consulting with the heads of the nursing schools; and

(iv) One (1) certified nurse practitioner from the state at large;

(B) The Director of the Arkansas State Medical Board as an ex officio nonvoting member; and

(C) The Director of the Arkansas State Board of Nursing as an ex officio nonvoting member.

(3)(A)(i) Full Independent Practice Credentialing Committee members shall serve three-year terms.

(ii) Full Independent Practice Credentialing Committee members shall not serve more than two (2) consecutive terms.

(B) A Full Independent Practice Credentialing Committee member shall serve until a successor is appointed by the appropriate appointing entity.

(4)(A) The Full Independent Practice Credentialing Committee shall elect a chair with powers and duties determined by the Full Independent Practice Credentialing Committee.

(B) The chair may be elected for no more than two (2) consecutive terms.

(5)(A) A quorum of the Full Independent Practice Credentialing Committee shall be five (5) members.

(B) The Full Independent Practice Credentialing Committee shall hold a meeting at least quarterly and at other times the Full Independent Practice Credentialing Committee considers advisable to perform the duties described in subsection (e) of this section.

(6) The members of the Full Independent Practice Credentialing Committee shall receive mileage and per diem as is now provided to members of the appropriate appointing entity.

(e) The Full Independent Practice Credentialing Committee shall:

(1)(A) Review and approve or deny all applications for a certificate of full independent practice authority for certified nurse practitioners and for renewal of a certificate of full independent practice authority for a certified nurse practitioner.

(B) If the Full Independent Practice Credentialing Committee denies an application for a certificate of full independent practice authority, the Full Independent Practice Credentialing Committee shall explain the reasons for the denial in writing to the applicant;

(2) Review complaints made against certified nurse practitioners who have a certificate of full independent practice authority;

(3) Review recommendations made by the Arkansas State Medical Board and the Arkansas State Board of Nursing and notify the certified nurse practitioner of any action taken by the Full Independent Practice Credentialing Committee based on the recommendations;

(4)(A) If the action taken is suspension or revocation of the certificate of full independent practice authority, hold a hearing providing the certified nurse practitioner who has a certificate of full independent practice authority with ten (10) days' notice in writing to appear before the Full Independent Practice Credentialing Committee, at the time and place as the Full Independent Practice Credentialing Committee may direct, to show cause as to why his or her certificate of full independent practice authority should not be suspended or revoked.

(B) At the hearing, the Full Independent Practice Credentialing Committee shall:

(i)(a) Have the power to subpoena witnesses.

(b) The Chair of the Full Independent Practice Credentialing Committee or his or her designee shall sign subpoenas and have the power to administer oaths;

(ii) Hear evidence; and

(iii)(a) Determine if the certificate of full independent practice authority should be suspended or revoked.

(b) If the Full Independent Practice Credentialing Committee determines that the certificate of full independent practice authority should be suspended or revoked, the suspension or revocation shall take place immediately.

(C) However, only the Arkansas State Board of Nursing has the authority to suspend or revoke the nursing license of a certified nurse practitioner; and

(5) Provide reports quarterly and upon request regarding the number of applicants approved and denied to the Senate Committee on Public Health, Welfare, and Labor and the House Committee on Public Health, Welfare, and Labor.

(f)(1) The Full Independent Practice Credentialing Committee may consult with the Arkansas State Medical Board and the Arkansas State Board of Nursing as determined by the Full Independent Practice Credentialing Committee based on the complaint.

(2) The Arkansas State Medical Board and the Arkansas State Board of Nursing may make recommendations to the Full Independent Practice Credentialing Committee.

(g) A certified nurse practitioner whose certificate of full independent practice authority has been denied, suspended, or revoked by the Full Independent Practice Credentialing Committee under this section may appeal the action of the Full Independent Practice Credentialing Committee under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h) A certified nurse practitioner with a certificate of full independent practice authority shall conspicuously identify the certificate of full independent practice authority and that the certified nurse practitioner is not required to have a collaborative practice agreement on signage in the office where the certified nurse practitioner practices.

History. Acts 2021, No. 412, § 2.

A.C.R.C. Notes. Acts 2021, No. 412, § 1, provided: "Legislative intent. It is the intent of the General Assembly to:

"(1) Provide a legitimate pathway to

full practice authority for certified nurse practitioners; and

"(2) Reevaluate the composition of the Full Independent Practice Credentialing Committee in three (3) years."

17-87-315. Full practice authority for certified nurse midwives — Definition.

(a)(1) The General Assembly finds that:

(A)(i) Certified nurse midwives are advanced practice registered nurses who are nationally certified after completing postgraduate specialty education in an accredited program.

(ii) The scope of nurse midwifery includes care of gynecological and family planning services, preconception care, care during pregnancy, childbirth and postpartum care, care of a normal newborn during the first twenty-eight (28) days of life, and treatment of male partners for sexually transmitted infections;

(B) When women and infants do not have access to routine, quality health care, there is an increased risk of maternal and infant mortality and morbidity, including infant mortality and morbidity resulting from low birth weight and preterm birth;

(C) Certified nurse midwives are often underutilized in helping provide maternity, prenatal, postnatal, intrapartum, and reproductive healthcare services in this state;

(D) In 2018, less than one percent (1%) of births in Arkansas were attended by a certified nurse midwife;

(E) Integrating certified nurse midwives into maternity care could help improve women's access to healthcare providers and quality of care;

(F) Midwifery-led models of care have been proven to improve maternal and infant outcomes for socially at-risk communities and achieve good maternal and infant outcomes on a large scale; and

(G) To increase healthcare provider choices for women and access to maternity, prenatal, postnatal, intrapartum, and reproductive healthcare services, the certified nurse midwives of this state should be granted full authority to practice to the extent of their education, clinical training, and certification.

(2) It is the intent of the General Assembly to grant certified nurse midwives full practice authority.

(b) As used in this section, "full practice authority" means the authority of a healthcare professional to:

(1) Evaluate patients;

(2) Diagnose medical conditions;

(3) Order and interpret diagnostic tests;

(4) Initiate and manage treatment and care plans, including appropriate comanagement or transfer of high-risk patients to other healthcare professionals as needed; and

(5) Prescribe and administer drugs listed in Schedules III — V without a collaborative practice agreement or supervision of another healthcare professional when performing healthcare services.

(c)(1) A certified nurse midwife with full practice authority is not subject to the collaborative practice agreement requirements in § 17-87-310 if providing prescriptions of medications that are in Schedules III — V.

(2) A collaborative practice agreement under § 17-87-310 is required to provide prescriptions of medications that are in Schedule II.

(d) For a delivery outside of an accredited facility, the certified nurse midwife shall identify a licensed physician or facility, or both, with which an arrangement has been made for referral and consultation in the event of a medical complication.

(e) This section does not authorize a certified nurse midwife to perform an abortion or provide abortion counseling or abortion referrals.

History. Acts 2021, No. 607, § 2.

17-87-316. Fees and disposition of fees related to Full Independent Practice Credentialing Committee.

(a) The Full Independent Practice Credentialing Committee shall establish fees relating to application, certification, endorsement, certification for prescriptive authority, certification renewal, and other reasonable services as determined by the committee.

(b) The committee may promulgate rules as necessary to administer the fees, rates, or charges for application, certification, endorsement, certification for prescriptive authority, certification renewal, and other reasonable services.

(c)(1) Revenue collected under § 17-87-314 shall be deposited into the State Treasury as cash funds to be known as the “Full Independent Practice Credentialing Committee Fund” to be used as set out in § 17-87-314.

(2) The cash fund established in this section shall be maintained and administered by the committee and shall be used for the payment of personal services, operating expenses, and for the payment of mileage and per diem of committee members for attendance at meetings, briefings, and hearings.

History. Acts 2021, No. 769, § 56.

SUBCHAPTER 4 — EDUCATIONAL PROGRAMS

SECTION.

17-87-402. Institutions of higher education — Challenge and validation examinations — Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-87-402. Institutions of higher education — Challenge and validation examinations — Definitions.

(a) As used in this section:

(1) “Challenge examination” means a test designed to determine the level of knowledge of the person being tested in the subject area of the test. Challenge examinations may cover any area of academic pursuit; and

(2) “Validation examination” means an evaluation of prior knowledge, experience, or skills. Validation examinations are administered to determine the proper placement of the examinee within a nurse training program.

(b) The Division of Higher Education shall:

(1) Encourage and supervise the development of methods of validation of nursing knowledge and skills through written and clinical testing mechanisms;

(2) Review and approve validation and challenge examinations for fairness and relevant content;

(3) Set uniform passing scores to be used by institutions of higher education in this state for passing standardized validation and challenge examinations when the passing scores are not determined at the national level; and

(4) Require schools using individual school-made tests to select one (1) standard passing score for each test which any level of student must achieve to receive credit.

(c) All institutions of higher education in this state shall use standardized validation and challenge examinations or devise their own. All challenge examinations and all validation examinations shall be submitted to the division for its approval. Upon the successful passing of a validation examination or challenge examination, the examinee shall be given credit for the course which is the subject of the test.

(d) Each Arkansas institution of higher education shall accept the credit given by other Arkansas institutions of higher education for the successful passing of a challenge examination or a validation examination on any course required in the nursing curriculum.

(e)(1) Licensed practical nurses and licensed psychiatric technician nurses may transfer or challenge by test, or validate, up to thirty (30) semester credit hours from the total nursing program curriculum upon entering diploma, associate degree, or baccalaureate degree programs in nursing in Arkansas. This does not include other hours they may have earned which may also be transferred.

(2) Registered nurses may transfer or challenge by test, or validate, up to sixty (60) semester credit hours from the total nursing program curriculum upon entering a baccalaureate degree program in nursing in Arkansas. This does not include other hours they may have earned which may also be transferred.

History. Acts 1979, No. 88, §§ 1-5; A.S.A. 1947, §§ 72-759.1 — 72-759.5; Acts 2019, No. 910, §§ 2244, 2245.

Amendments. The 2019 amendment substituted “Division of Higher Education” for “Department of Higher Education”.

tion” in the introductory language in (b); and substituted “division” for “department” in (c).

SUBCHAPTER 6 — INTERSTATE NURSE LICENSURE COMPACT

SECTION.

17-87-603. Definition.

17-87-603. Definition.

As used in this subchapter, the term “head of the state licensing board” means the Director of the Arkansas State Board of Nursing.

History. Acts 1999, No. 220, § 3; 2019, No. 386, § 39.

Amendments. The 2019 amendment substituted “state” for “nurse”.

SUBCHAPTER 7 — MEDICATION ASSISTIVE PERSONS

SECTION.

17-87-701. Definitions.

17-87-704. Qualifications.

SECTION.

17-87-707. Disciplinary actions.

17-87-708. Penalty.

17-87-701. Definitions.

As used in this subchapter:

- (1) “Board” means the Arkansas State Board of Nursing;
- (2) “Designated facility” means a type of facility determined by the board as an environment in which medication assistive persons may serve in accordance with the requirements of this subchapter and rules promulgated by the board;
- (3) “Medication assistive person” means a person who is certified by the board to administer certain nonprescription and legend drugs in designated facilities; and
- (4) “Supervision” means the active oversight of patient care services while on the premises of a designated facility in a manner defined by the board.

History. Acts 2005, No. 1423, § 4; 2019, No. 315, § 1543.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (2).

17-87-704. Qualifications.

(a) In order to be certified as a medication assistive person, an applicant shall submit to the Arkansas State Board of Nursing written evidence, verified by oath, that the applicant:

(1)(A) Is currently listed in good standing on the state’s certified nurse aide registry;

(B) Has maintained registration on the state’s certified nurse aide registry continuously for a minimum of one (1) year;

(C) Has completed at least one (1) continuous year of full-time experience as a certified nurse aide in this state;

(D) Is currently employed at a designated facility;

(E) Has a high school diploma or the equivalent;

(F) Has successfully completed a literacy and reading comprehension screening process approved by the board;

(G) Has successfully completed a medication assistive person training course of not less than one hundred (100) hours approved by the board; and

(H) Has successfully passed an examination on subjects the board determines; or

(2)(A) Has completed a portion of a nursing education program equivalent to the medication assistive person training course; and

(B) Passed the medication aide examination.

(b) The board may issue a certification as a medication assistive person by endorsement to an applicant who has been licensed or certified as a medication assistive person under the laws of another state or territory, if:

(1) In the opinion of the board, the applicant meets the qualifications of medication assistive persons in this state; and

(2) The board recommends certification.

(c) Any person holding a certification as a medication assistive person shall have the right to use the title "medication assistive person" and the abbreviation "M.A.P."

(d) The training courses for medication assistive persons may be provided by a postsecondary educational institution, a hospital, or a consortium of five (5) or more skilled nursing facilities.

History. Acts 2005, No. 1423, § 4; **Amendments.** The 2021 amendment 2007, No. 206, § 1; 2021, No. 759, § 2. added (d).

17-87-707. Disciplinary actions.

(a) The Arkansas State Board of Nursing shall have sole authority to deny, suspend, revoke, or limit any medication assistive person certificate issued by the board or applied for in accordance with the provisions of this subchapter or to otherwise discipline a certificate holder upon proof that the person:

(1) Has been found guilty of or pleads guilty or nolo contendere to:

(A) Fraud or deceit in procuring or attempting to procure a medication assistive person certificate; or

(B) Providing services as a medication assistive person without a valid certificate;

(2) Is unfit or incompetent by reason of negligence, habits, or other causes;

(3) Is habitually intemperate or is addicted to the use of habit-forming drugs;

(4) Is mentally incompetent;

(5) Is guilty of unprofessional conduct;

(6) Has had a license, certificate, or registration revoked or suspended;

(7) Has been placed on probation or under disciplinary order in any jurisdiction;

(8) Has voluntarily surrendered a license, certification, or registration and has not been reinstated in any jurisdiction; or

(9) Has willfully or repeatedly violated any of the provisions of this subchapter.

(b) The board shall refuse to issue or shall revoke the certificate of any person who would be disqualified from employment under the provisions of § 20-33-213.

(c) Proceedings under this section shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2005, No. 1423, § 4; **Amendments.** The 2019 amendment 2009, No. 762, § 2; 2019, No. 990, § 77. deleted (a)(1)(C).

17-87-708. Penalty.

(a)(1) It shall be a misdemeanor for any person to:

(A) Sell or fraudulently obtain or furnish any medication assistive person's certificate, renewal, or record or aid or abet in any such sale or fraud;

(B) Serve as a medication assistive person under cover of any certificate or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(C) Serve as a medication assistive person unless certified by the Arkansas State Board of Nursing;

(D) Use in connection with his or her name any of the following titles, names, or initials if the user is not properly certified under this subchapter:

(i) Medication assistive person;

(ii) M.A.P.;

(iii) Medication aide;

(iv) Medication technician;

(v) Medication assistant;

(vi) Certified medication aide;

(vii) C.M.A.;

(viii) Medication assistant – Certified;

(ix) MA – C; or

(x) Any other name, title, or initials that would cause a reasonable person to believe the user is certified under this subchapter;

(E) Serve as a medication assistive person during the time his or her certification is suspended;

(F) Conduct an education program for the preparation of medication assistive persons unless the program has been approved by the board; or

(G) Otherwise violate any provisions of this subchapter.

(2)(A) A misdemeanor under subdivision (a)(1) of this section shall be punishable by a fine of not less than twenty-five dollars (\$25.00) or more than five hundred dollars (\$500).

(B) Each subsequent offense shall be punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment of not more than thirty (30) days, or by both a fine and imprisonment.

(b)(1) After providing notice and a hearing, the board may levy civil penalties in an amount not to exceed one thousand dollars (\$1,000) against a person or entity for each violation of this subchapter or rules promulgated under this subchapter.

(2) Each day of violation shall be a separate offense.

(c) Unless a penalty assessed under this section is paid within fifteen (15) calendar days following the date for an appeal from the order, the board may file suit in Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

(d) The penalties permitted in this section shall be in addition to other penalties that may be imposed by the board under this subchapter.

History. Acts 2005, No. 1423, § 4; substituted “rules” for “regulations” in 2007, No. 206, § 2; 2019, No. 315, § 1544. (b)(1).

Amendments. The 2019 amendment

CHAPTER 88

OCCUPATIONAL THERAPISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGULATORY AGENCIES.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-88-102. Definitions.

17-88-102. Definitions.

As used in this chapter:

(1) “Occupational therapist” means a person licensed to practice occupational therapy, whose license is in good standing;

(2)(A) “Occupational therapy” means the evaluation and treatment of individuals whose ability to cope with the tasks of living is threatened or impaired by developmental deficits, the aging process, poverty or cultural differences, environmental or sensory deprivation, physical injury or illness, or psychological and social disability.

(B) The treatment utilizes task-oriented activities to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual so that he or she

might perform tasks normally performed at his or her stage of development.

(C) Specific occupational therapy techniques include, but are not limited to:

(i) Instruction in activities of daily living, design, fabrication, application, recommendation, and instruction in the use of selected orthotic or prosthetic devices and other adaptive equipment;

(ii) Perceptual-motor and sensory integrative activities;

(iii) The use of specifically designed crafts;

(iv) Exercises to enhance functional performance; and

(v) Prevocational evaluation and treatment.

(D) The techniques are applied in the treatment of individual patients or clients, in groups, or through social systems;

(3) "Occupational therapy aide" or "worker" means a person who aids a licensed occupational therapist in the practice of occupational therapy, whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy;

(4) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the frequent and regular supervision by or with consultation with an occupational therapist, whose license is in good standing. The definition of "frequent" and "regular" will be established by the Arkansas State Occupational Therapy Examining Committee; and

(5) "Person" means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this chapter.

History. Acts 1977, No. 381, § 2; A.S.A. 1947, § 72-1902; Acts 2019, No. 386, § 40.

Amendments. The 2019 amendment repealed former (1) through (3).

SUBCHAPTER 2 — REGULATORY AGENCIES

SECTION.

17-88-201. Arkansas State Medical Board.

17-88-201. Arkansas State Medical Board.

(a) The Arkansas State Medical Board shall administer the provisions of this chapter.

(b) With the advice and assistance of the Arkansas State Occupational Therapy Examining Committee, the board shall pass upon the qualification of applicants for licensure, regulate and supervise all examinations, determine the applicants who successfully pass the examination, and license the applicants who meet the qualifications provided in this chapter.

(c) In addition to the other powers and duties set out elsewhere in this chapter, the board shall:

(1) Adopt and put into effect reasonable rules to carry this chapter into effect;

(2) Investigate reported violations of this chapter and take such steps as may be necessary to enforce this chapter;

(3) Keep a record of its proceedings under this chapter and of all persons registered by it on a register which shall show the name of every registrant, his or her last known place of business, his or her last known place of residence, and the date and number of his or her license; and

(4) Compile a list of all occupational therapists who are licensed to practice occupational therapy in the State of Arkansas. The list shall be printed annually. It shall furnish a copy of the list to all persons requesting it upon the payment of a fee as may be fixed by the board to compensate for the cost of printing the list.

History. Acts 1977, No. 381, §§ 3, 5; A.S.A. 1947, §§ 72-1903, 72-1905; Acts 2019, No. 315, § 1545.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c)(1).

SUBCHAPTER 3 — LICENSING

SECTION.

17-88-302. Qualifications of applicants.

17-88-305. Reciprocity.

SECTION.

17-88-309. Denial, revocation, or suspension — Grounds.

17-88-302. Qualifications of applicants.

Each applicant must meet the following conditions:

(1) The applicant must be an individual at least eighteen (18) years of age;

(2) [Repealed.]

(3)(A) The applicant must have successfully completed the academic requirements of an educational program in occupational therapy with concentration in biological or physical science, psychology, and sociology, and with education in selected manual skills.

(B) For an occupational therapist, the program shall be accredited by the Accreditation Council for Occupational Therapy Education and shall lead to the awarding of a bachelor's or master's level degree or advanced standing certificate in occupational therapy.

(C) For an occupational therapy assistant, the program shall be approved by the Accreditation Council for Occupational Therapy Education and shall lead to the awarding of an associate level degree in occupational therapy;

(4) The applicant must have successfully completed a period of supervised field work experience at a recognized educational institution where he or she met the following academic requirements:

(A) For an occupational therapist, a minimum of six (6) months of supervised field work experience is required; or

(B) For an occupational therapy assistant, a minimum of two (2) months of supervised field work experience at an approved facility

other than the one at which the person was previously employed, if applicable, is required; and

(5) The applicant must have passed an examination conducted by the Arkansas State Medical Board as provided in § 17-88-304.

History. Acts 1977, No. 381, § 7; A.S.A. 1947, § 72-1907; Acts 1993, No. 1219, § 16; 2019, No. 265, § 1; 2019, No. 990, § 78.

Amendments. The 2019 amendment by No. 265 deleted “American Medical Association in collaboration with the” pre-

ceding “Accreditation” in (3)(B); and substituted “Accreditation Council of Occupational Therapy” for “American Occupational Therapy Association” in (3)(B) and (3)(C).

The 2019 amendment by No. 990 repealed (2).

17-88-305. Reciprocity.

(a) A licensed occupational therapist who has been issued a license to practice occupational therapy in another state or territory whose requirements for registration and licensure were equal at the time of his or her registration to the requirements in this chapter may be registered and issued a license by the Arkansas State Medical Board, provided that the state or territory from which the applicant comes accords a similar privilege of registration and licensure to persons registered and licensed in the State of Arkansas by the board.

(b) The issuance of a license by reciprocity by the board shall be at the sole discretion of the board, and the board may provide such rules governing admission as it may deem necessary or desirable.

(c) Any occupational therapist or occupational therapy assistant who has been certified by the Accreditation Council of Occupational Therapy Education and who has been in continuous practice for the past five (5) years and who comes to Arkansas from a state presently not granting reciprocity or from a state not requiring licensing shall be eligible for licensing in Arkansas.

History. Acts 1977, No. 381, § 12; A.S.A. 1947, § 72-1912; Acts 2019, No. 265, § 2; 2019, No. 315, § 1546.

Amendments. The 2019 amendment by No. 265 substituted “Accreditation Council of Occupational Therapy” for

“American Occupational Therapy Association” in (c).

The 2019 amendment by No. 315 deleted “and regulations” following “rules” in (b).

17-88-309. Denial, revocation, or suspension — Grounds.

(a) After notice and hearing, the Arkansas State Medical Board may deny or refuse to renew a license or may suspend or revoke a license when the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public.

(b) Unprofessional conduct shall include:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(2) Being guilty of unprofessional conduct or gross negligence as defined by rules established by the Arkansas State Occupational

Therapy Examining Committee or violating the code of ethics adopted and published by the committee;

(3) Treating, or undertaking to treat, ailments of human beings otherwise than by occupational therapy, as authorized by this chapter;

(4) Being convicted of a felony listed under § 17-3-102; and

(5) Using any narcotic drug or alcohol to an extent that impairs the ability to perform the work of an occupational therapist or occupational therapy assistant with safety to the public.

(c) The procedure hereunder on all refusals, revocations, and suspensions of license shall be as prescribed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1977, No. 381, § 14; A.S.A. 1947, § 72-1914; Acts 2019, No. 990, § 79.

Amendments. The 2019 amendment substituted “a felony listed under § 17-3-102” for “a crime, other than minor offenses defined as ‘minor misdemeanors’, ‘violations’, or ‘offenses’, in any court if the

acts for which the applicant or licensee was convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant” in (b)(4).

CHAPTER 89

OPHTHALMIC DISPENSERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS BOARD OF DISPENSING OPTICIANS.
3. LICENSING AND REGISTRATION.
4. REGULATION OF PRACTICE.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-89-102. Definitions.

17-89-102. Definitions.

As used in this chapter:

(1) “Apprentice dispensing optician” means an individual registered with the Arkansas Board of Dispensing Opticians to work under the supervision of a licensed or registered dispensing optician, a physician skilled in disease of the eye, or an optometrist licensed by this state;

(2) [Repealed.]

(3) “Licensed dispensing optician” means any person licensed by the board to engage in ophthalmic dispensing;

(4)(A) “Ophthalmic dispensing” means the preparation of laboratory work orders, verification, and dispensing of spectacle lenses, spectacles, eyeglasses, or parts thereof to the intended wearer on a written prescription from a licensed physician skilled in disease of the eye or from a licensed optometrist.

(B) “Ophthalmic dispensing” shall include:

(i) The measuring, fitting, adapting, and adjusting of spectacle lenses, spectacles, eyeglasses, or parts thereof to the human face;

(ii) The preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabrication of eyewear;

(iii) The verification of the quality of finished spectacle lenses, spectacles, or eyeglasses; and

(iv) The adjustment or repair of spectacle frames to the human face.

(C) The prescribing, adapting, fitting, duplicating, dispensing, modifying, selling, or supplying of contact lenses for or to the human eye is specifically excluded;

(5) "Person" shall include individuals, partnerships, firms, corporations, professional corporations, unincorporated associations, or any of the foregoing;

(6) "Registered dispensing optician" means any person registered by the board to engage in ophthalmic dispensing; and

(7) "Supervision" means the direct personal physical provision of direction and control through personal inspection.

History. Acts 1981, No. 589, § 2; A.S.A. 1947, § 72-2102; Acts 2019, No. 386, § 41. **Amendments.** The 2019 amendment repealed former (2).

SUBCHAPTER 2 — ARKANSAS BOARD OF DISPENSING OPTICIANS

SECTION.

17-89-202. Meetings — Officers.

17-89-203. Powers and duties.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-89-202. Meetings — Officers.

(a) The Arkansas Board of Dispensing Opticians shall meet at least two (2) times each year, and at its first regular meeting each year shall elect a chair, vice chair, and secretary-treasurer.

(b) Each officer shall be elected for a term of one (1) year. If an officer is removed or resigns during his or her term of office, the board shall elect a successor for the balance of the unexpired term of office.

(c)(1) The Secretary-treasurer of the Arkansas Board of Dispensing Opticians shall perform those administrative duties assigned to him or her by the board and shall execute a bond for the state in a sum to be fixed by the board conditioned on the faithful performance of the duties of his or her office.

(2) The board shall outline the duties of the secretary-treasurer and fix his or her compensation, in consultation with the Secretary of the Department of Health, per diem, mileage, and other expense moneys in accordance with applicable Arkansas laws and rules.

History. Acts 1981, No. 589, §§ 4, 5; by No. 315 substituted “rules” for “regulations” in (c)(2).
A.S.A. 1947, §§ 72-2104, 72-2105; Acts 2019, No. 315, § 1547; 2019, No. 910, § 4880. The 2019 amendment inserted “in consultation with the Secretary of the Department of Health” in (c)(2).

Amendments. The 2019 amendment

17-89-203. Powers and duties.

(a) The Arkansas Board of Dispensing Opticians shall:

(1)(A) Administer, coordinate, and enforce the provisions of this chapter, evaluate qualifications and supervise the examination of applicants for licensure or registry under this chapter, and investigate complaints, allegations, and charges of practices violating the provisions of this chapter or rules adopted pursuant to this chapter.

(B) In evaluating qualifications and supervising the examination of applicants for licensure or registry under this chapter, verify an applicant’s qualifications, establish the format and content of examination procedures, administer both the practical and written examinations at least one (1) time each year, and issue a certificate of licensure or certificate of registry to each applicant successfully meeting the qualifications and passing the examination;

(2) Establish annually a schedule of examination and license fees based on the Arkansas Board of Dispensing Opticians’ financial requirements for the ensuing year;

(3) Compile and maintain a book of licensure and a book of registry of all dispensing opticians who are licensed or registered to engage in the business of ophthalmic dispensing in the State of Arkansas, which shall be updated annually. The Arkansas Board of Dispensing Opticians shall annually furnish a copy of the books to the State Board of Optometry and the Ophthalmology Section of the Arkansas Medical Society, Inc.;

(4) Register on an annual basis apprentice dispensing opticians together with the licensed or registered dispensing optician by whom they are employed;

(5) Prepare and present an annual report of administration, licensure, registry, and investigation to the State Board of Optometry and to the Ophthalmology Section of the Arkansas Medical Society, Inc.;

(6) Establish by rules those acts on the part of any person licensed or registered under this chapter which shall constitute improper conduct

and grounds for revocation or suspension of a license or registry or refusal to renew the license or registry;

(7) Investigate reported violations of this chapter and rules adopted pursuant to this chapter and take such steps as may be necessary to enforce this chapter and the rules;

(8) Conduct hearings and keep such records and minutes as are necessary for the orderly dispatch of its functions. The Arkansas Board of Dispensing Opticians shall provide notice to appropriate persons in the manner it considers appropriate of the times and places of all hearings authorized under this chapter;

(9) Adopt rules commensurate with the policies of this chapter and for the purpose of carrying this chapter into effect, including, but not limited to, rules which establish ethical standards of ophthalmic dispensing practices, application procedures, and procedures for investigating complaints. Following their adoption, the rules shall govern and control the business conduct of every person licensed or registered under this chapter in this state engaged in ophthalmic dispensing; and

(10) Have the discretion to adopt an official seal.

(b) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to all authority and procedures of the Arkansas Board of Dispensing Opticians.

History. Acts 1981, No. 589, § 6; A.S.A. 1947, § 72-2106; Acts 1993, No. 1087, § 4; 1999, No. 524, § 3; 2019, No. 315, § 1548.

Amendments. The 2019 amendment deleted “and regulations” following “Adopt rules” in the first sentence of (a)(9).

SUBCHAPTER 3 — LICENSING AND REGISTRATION

SECTION.

- 17-89-302. Qualifications — Licensed dispensing opticians.
- 17-89-303. Qualifications — Registered dispensing opticians.
- 17-89-305. Reciprocity.
- 17-89-306. Dispensers from nonlicensing states.

SECTION.

- 17-89-308. Continuing education program.
- 17-89-309. Denial, suspension, or revocation — Grounds.

17-89-302. Qualifications — Licensed dispensing opticians.

(a) Every applicant for examination as a licensed dispensing optician shall present satisfactory evidence to the Arkansas Board of Dispensing Opticians that he or she is over twenty-one (21) years of age, a high school graduate or the equivalent thereof, and either:

(1) Is a graduate of a school of opticianry whose curriculum consists of at least eighteen (18) months of didactic and practical instruction which is accredited by a national accreditation organization and approved by the board; or

(2)(A) Has been engaged in the providing of ophthalmic dispensing services, as defined in this chapter, in the State of Arkansas for a period of not less than five (5) years immediately before application.

(B) No more than three (3) years may consist of:

(i) Working in a qualified service optical laboratory approved by the board; or

(ii) Providing ophthalmic dispensing services under the direct supervision of an Arkansas-licensed or registered dispensing optician, Arkansas-licensed optometrist, or Arkansas physician skilled in diseases of the eye.

(b) All persons making application for licensure as licensed dispensing opticians must successfully complete the written and practical examination prepared and conducted by the board.

History. Acts 1981, No. 589, § 7; A.S.A. 1947, § 72-2107; Acts 1987, No. 966, § 1; 1993, No. 1219, § 17; 2019, No. 990, § 80. in the introductory language of (a), deleted “of good moral character” following “age” and made a stylistic change.

Amendments. The 2019 amendment,

17-89-303. Qualifications — Registered dispensing opticians.

Every applicant for examination as a registered dispensing optician shall present satisfactory evidence to the Arkansas Board of Dispensing Opticians that he or she is over twenty-one (21) years of age, a high school graduate or the equivalent thereof, and either:

(1) Has a minimum of three (3) years’ dispensing experience in Arkansas under the direct supervision of an Arkansas-licensed optometrist or Arkansas-licensed physician skilled in disease of the eye;

(2) Has a minimum of three (3) years’ experience under the direct supervision of a licensed or registered dispensing optician holding a certificate of licensure or registry in the State of Arkansas, one (1) year of which may be while working in a qualified full-service optical laboratory approved by the board; or

(3) Is a graduate of an approved school of opticianry which has been accredited by a national accreditation organization and is recognized by the board.

History. Acts 1981, No. 589, § 7; A.S.A. 1947, § 72-2107; Acts 1993, No. 1219, § 18; 2019, No. 990, § 81. deleted “of good moral character” and made a stylistic change in the introductory language.

Amendments. The 2019 amendment

17-89-305. Reciprocity.

(a) Any person who desires to provide ophthalmic dispensing services to the public as a licensed or registered dispensing optician in this state and who holds a current validated certificate of licensure or registry as a dispensing optician in a state whose requirements for licensure or registry are in the opinion of the Arkansas Board of Dispensing Opticians at least equivalent to those of this state may at the discretion of the board be issued a certificate of licensure or a certificate of registry.

(b) The certificate may be issued without a written or practical examination upon payment of the fee prescribed in § 17-89-304(f) to

the Secretary-treasurer of the Arkansas Board of Dispensing Opticians and upon satisfactory proof that the applicant:

- (1) Is qualified under the provisions of this chapter;
- (2) Has provided ophthalmic dispensing services to the public as a dispensing optician in the state of licensure or registration for a period of at least five (5) years for licensure or three (3) years for registration immediately before his or her application for reciprocity to this state; and
- (3) Is licensed or registered in a state which grants like reciprocal privileges to opticians who hold certificates of licensure or registry issued by this state.

History. Acts 1981, No. 589, § 10; A.S.A. 1947, § 72-2110; Acts 1993, No. 1219, § 19; 2019, No. 990, § 82. **Amendments.** The 2019 amendment deleted former (b)(2) and redesignated the remaining subdivisions accordingly.

17-89-306. Dispensers from nonlicensing states.

(a) Any person from a nonlicensing state who desires to provide ophthalmic dispensing services to the public as a licensed or registered dispensing optician in this state, and who submits satisfactory evidence to the Arkansas Board of Dispensing Opticians that he or she meets the following requirements, shall be eligible for licensure or registry by the board.

(b) The applicant shall:

- (1) Be qualified under the provisions of this chapter;
- (2) Have been engaged in ophthalmic dispensing as described in § 17-89-102(4) for a period of:

(A) Five (5) years for applicants for licensure, of which no more than three (3) years may be while working in a qualified full-service optical laboratory approved by the board; or

(B) Three (3) years for applicants for registry, of which no more than one (1) year may be while working in a qualified full-service laboratory approved by the board immediately before the date of application;

(3) Successfully complete the written and practical examination for licensure or registry prepared and conducted by the board; and

(4) Have paid the fee prescribed in § 17-89-304(f) to the Secretary-treasurer of the Arkansas Board of Dispensing Opticians.

History. Acts 1981, No. 589, § 10; A.S.A. 1947, § 72-2110; Acts 1993, No. 1219, § 20; 2019, No. 990, § 83. substituted “shall” for “must” in the introductory language of (b); and deleted former (b)(2) and redesignated the remaining subdivisions accordingly.

Amendments. The 2019 amendment

17-89-308. Continuing education program.

(a) The Arkansas Board of Dispensing Opticians may institute a program for continuing education for its licensees.

(b) The board may require proof of successful completion of its continuing education requirements as a condition for renewal of license, except that the board shall not require more than nine (9) clock hours of continuing education within any two-year period.

(c) Only courses approved by the board shall be acceptable for satisfying the continuing education requirements.

(d) The board shall promulgate rules to implement this section.

History. Acts 1985, No. 962, § 1; A.S.A. 1947, § 72-2129; Acts 2019, No. 315, § 1549. **Amendments.** The 2019 amendment substituted "rules" for "regulations" in (d).

17-89-309. Denial, suspension, or revocation — Grounds.

(a) The Arkansas Board of Dispensing Opticians shall revoke or suspend or refuse to issue or renew a license or registration of any dispensing optician for any violation of any provision of this chapter or of any rules promulgated by the board, including, but not limited to, the following:

(1) The applicant, licensee, or registrant obtaining a license or registration by means of fraud, misrepresentation, or concealment of material facts;

(2) The applicant, licensee, or registrant engaging in conduct, including, but not limited to, engaging in the advertising practice commonly known as "bait and switch", or establishing an ophthalmic dispensing business immediately adjacent to the office of a licensed optometrist or physician skilled in diseases of the eye in what is commonly known as a "side-by-side" operation, or engaging in the referral procedure commonly known as "capping and steering";

(3) The applicant, licensee, or registrant being convicted of a felony listed under § 17-3-102;

(4) The applicant, licensee, or registrant violating any prohibitive provision under this chapter;

(5) The applicant, licensee, or registrant engaging in any fraudulent, misleading, or deceptive advertising;

(6) The applicant, licensee, or registrant failing to qualify for the license or registration;

(7) The applicant, licensee, or registrant violating any other rule promulgated by the board; or

(8) The applicant, licensee, or registrant using any narcotic drug or alcohol which impairs his or her ability to perform the work of an ophthalmic dispenser.

(b) If after due notice and hearing a person licensed or registered as an optician or apprentice under this chapter is found to have violated this chapter, the board may impose any one (1) or more of the following sanctions:

(1) Suspension, revocation, or denial of the license or registration or the renewal thereof;

(2) A penalty not to exceed one thousand dollars (\$1,000) for each violation;

(3) Place conditions or restrictions upon the person’s license, registration, or practice; or

(4) Such other requirements or penalties as may be appropriate to the circumstances or the case, and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.

(c) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain the judgment for the amount of the penalty not paid.

History. Acts 1981, No. 589, § 17; A.S.A. 1947, § 72-2117; Acts 1999, No. 524, § 4; 2019, No. 315, § 1550; 2019, No. 990, § 84.

The 2019 amendment by No. 990 substituted “felony listed under § 17-3-102” for “felony in any state or federal court, and not pardoned, if the acts for which the person is convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of a dispensing optician” in (a)(3).

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules” in the introductory language of (a) and “or regulation” following “rule” in (a)(7).

SUBCHAPTER 4 — REGULATION OF PRACTICE

SECTION.

- 17-89-403. Standards for materials.
- 17-89-404. Branch offices.
- 17-89-405. Fraudulent, misleading, or deceptive advertising prohibited.

SECTION.

- 17-89-408. Office permit.

17-89-403. Standards for materials.

All ophthalmic materials, including eyeglasses, spectacles, lenses, or other optical devices or materials or parts thereof, sold in the State of Arkansas must conform to standards of quality as promulgated by the American National Standards Institute, commonly known as “Z-80.1 standards”, or any standards later set forth in a rule promulgated by the Arkansas Board of Dispensing Opticians.

History. Acts 1981, No. 589, § 22; A.S.A. 1947, § 72-2122; Acts 2019, No. 315, § 1551.

Amendments. The 2019 amendment substituted “rule” for “regulation”.

17-89-404. Branch offices.

(a) No licensed or registered dispensing optician or other person in this state shall establish more than two (2) ophthalmic dispensing branch offices in addition to his or her principal office unless he or she shall have first secured a branch office permit from the Arkansas Board of Dispensing Opticians.

(b)(1) With board approval, the board shall promulgate rules establishing the branch office permit and the procedures for issuing, suspending, or revoking the branch office permit.

(2) The rules shall comply with the pertinent provisions of all existing state law.

(c) All businesses providing retail ophthalmic dispensing services, as defined in § 17-89-102(4), to the public must have physically present a licensed or registered dispensing optician within the place of business at the time the services are provided.

(d) Each optical dispensary in the State of Arkansas whose title does not contain the proper name of an Arkansas optometrist or Arkansas physician skilled in diseases of the eye or a licensed or registered dispensing optician holding a certificate of licensure or registry in the State of Arkansas must file a certificate of ownership each year with the board between June 1 and June 30. Each certificate of ownership must give the name and address of the dispensary, the optometrist or physician skilled in diseases of the eye, or licensed or registered dispensing optician or person who owns or maintains legal responsibility of the dispensary.

History. Acts 1981, No. 589, § 16; A.S.A. 1947, § 72-2116; Acts 1987, No. 966, § 4; 2019, No. 315, § 1552.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (b)(1) and (b)(2).

17-89-405. Fraudulent, misleading, or deceptive advertising prohibited.

It shall be unlawful for any dispensing optician or any person engaged in ophthalmic dispensing in this state, or anyone on their behalf, to knowingly or willfully engage in any fraudulent, misleading, or deceptive advertising. Any of the following practices shall be deemed to be fraudulent, misleading, or deceptive advertising:

(1) The use in any advertisement, whether by newspaper, magazine, circular, sign, billboard, radio, television, or any other printed, oral, or visual form of advertising, of a picture, drawing, or other illustration or format which conveys the impression or belief that the ophthalmic dispenser or dispensing optician firm provides eye examinations or is qualified to give complete eye care service, which may include eye examinations and the issuance of prescriptions for spectacles;

(2)(A) The use of words or a format designed to convey or which results in conveying an impression that the ophthalmic dispensing firm or the dispensing optician is qualified to provide eye care service other than the services that are authorized by the laws of this state and rules promulgated pursuant thereto for ophthalmic dispensing in this state.

(B) For the purposes of this subsection, the use of the words “eye care”, “professional eye care”, or the use of such words as “providing experienced professionals trained to meet your eye care needs” and similar words or expressions in the advertisement shall be interpreted as being fraudulent, misleading, and deceptive, since these terms are normally accepted and understood to represent services that can be performed only by a licensed optometrist or a licensed physician;

(3) Failure to include in the advertisement the disclaimer provision required in § 17-89-406(a); and

(4) The use of any other advertising method which conveys a misleading or deceptive interpretation of the services that may be provided by a dispensing optician or by an ophthalmic dispensing firm in this state, within the limitations provided by law.

History. Acts 1985, No. 418, § 2; A.S.A. 1947, § 72-2125; Acts 2019, No. 315, § 1553.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (2)(A).

17-89-408. Office permit.

(a)(1) It shall be unlawful for any person or legal entity to conduct an office or place of business in this state where ophthalmic dispensing services are offered or performed unless that person or entity shall have first secured an office permit from the Arkansas Board of Dispensing Opticians pursuant to board rule for each such office or place of business.

(2) However, persons or entities identified in § 17-89-103 are exempt from this section.

(3) The office permit shall be prominently displayed in each office or place of business in this state where ophthalmic dispensing services are offered or performed.

(b) The office permit shall be renewed on or before July 1 of each year at a cost and pursuant to procedures to be determined by board rule.

(c) The board shall suspend, revoke, or refuse to issue or renew an office permit for any violation of any provision of this chapter or of any rules promulgated by the board, including at least the following:

(1) The applicant, person, or legal entity obtains an office permit by means of fraud, misrepresentation, or concealment of material facts;

(2) The applicant, person, or legal entity violates any prohibitive provision under this chapter;

(3) The applicant, person, or legal entity engages in any fraudulent, misleading, or deceptive advertising;

(4) The applicant, person, or legal entity fails to qualify for the office permit; or

(5) The applicant, person, or legal entity violates any other rule promulgated by the board.

(d) After due notice and a hearing regarding a violation of this section, the board may impose any one (1) of the following sanctions:

(1) Suspension, revocation, or denial of the office permit renewal thereof;

(2) A penalty not to exceed one thousand dollars (\$1,000) for each violation; or

(3) Such other requirements or penalties as may be appropriate to the circumstance or the case and which would achieve the desired disciplinary purpose but which would not impair the public welfare and morals.

(e) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain the judgment for the amount of the penalty not paid.

History. Acts 1999, No. 524, § 6; Acts 2019, No. 315, §§ 1554, 1555.

Amendments. The 2019 amendment substituted “rule” for “regulation” in (a)(1); deleted “or regulation” following

“rule” in (b); deleted “and regulations” following “rules” in the introductory language of (c); and deleted “or regulation” following “rule” in (c)(5).

CHAPTER 90 OPTOMETRISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE BOARD OF OPTOMETRY.
3. LICENSING.
4. OPTOMETRIC DRUGS.
5. IMPAIRED OPTOMETRIST TREATMENT PROGRAM.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-90-101. Definition — Applicability.
17-90-108. Requirement to provide eye-glass prescription.

SECTION.

17-90-109. Regulation of contact lenses.
17-90-111. Loans to optometry students.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-90-101. Definition — Applicability.

(a)(1) The “practice of optometry” means the examination, diagnosis, treatment, and management of conditions of the human eye, lid, adnexa, and visual system, including the removal of foreign bodies from the cornea, conjunctiva, lid, or adnexa but shall exclude other surgery of the lid, adnexa, or visual system which requires anything other than a topical anesthetic.

(2) "Optometry" shall include utilizing any method or means which the licensed optometrist is educationally qualified to provide, as established and determined by the State Board of Optometry. In administering this chapter, the board shall by rule prescribe those acts, services, procedures, and practices which constitute both primary optometric eye care and the practice of optometry.

(3)(A) The "practice of optometry" shall include, but not be limited to, the prescribing and sale of eyeglasses and contact lenses, the prescribing and administering of all oral and topical drugs for the diagnosis or treatment only of conditions of the eye, lids, and adnexa, and the prescribing and administering of epinephrine, benadryl, or other comparable medication for the emergency treatment of anaphylaxis or anaphylactic reactions.

(B) All licensed optometrists are prohibited from using ophthalmic lasers for surgical procedures except as permitted in subdivision (a)(3)(D) of this section, performing cataract surgery, performing radial keratotomy surgery, and selling prescription drugs.

(C)(i) Optometrists are excluded from possessing, administering, or prescribing those pharmaceutical agents listed in Schedules I and II of the Uniform Controlled Substances Act, § 5-64-101 et seq., except hydrocodone combination drugs, regardless of their schedule, in combination with oral analgesic drugs.

(ii) A prescription written by an optometrist for hydrocodone combination drugs, regardless of their schedule, in combination with oral analgesic drugs, shall not exceed seventy-two (72) hours and shall not authorize refills.

(D) The "practice of optometry" includes the following procedures:

(i) Injections, excluding intravenous or intraocular injections;

(ii) Incision and curettage of a chalazion;

(iii) Removal and biopsy of skin lesions with low risk of malignancy, excluding lesions involving the lid margin or nasal to the puncta;

(iv) Laser capsulotomy; and

(v) Laser trabeculoplasty.

(b) Any person who utilizes any objective or subjective method, including, but not limited to, self-testing devices and computerized or automated refracting devices for the purpose of preparing an optical prescription, to analyze or determine any optical defect, deficiency, deformity, or visual or muscular anomaly of the visual system, who measures the curvature of the human cornea, who prescribes, tints, coats, dispenses, adapts, or duplicates lenses, prisms, ocular exercises, visual therapy, or orthoptics for the correction, relief, or aid of the visual functions, who prescribes, adapts, fits, duplicates, dispenses, modifies, sells, or supplies contact lenses, or who holds himself or herself out as being able to do so, shall be deemed to be engaged in the practice of optometry.

(c) Those licensed optometrists who meet the qualifications and standards established by the board shall be designated "optometric physicians".

(d) Nothing in this chapter shall apply to physicians and surgeons as defined in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(e) Nothing in this chapter shall prevent the performance of those acts, practices, and procedures, including the ordering, application, and sale of tints or coats for spectacle lenses, by legally qualified persons who are specifically authorized and approved by the Ophthalmic Dispensing Act, § 17-89-101 et seq.

(f)(1) Every licensed optometrist shall within ten (10) days of receipt of written notification of the filing of a claim or lawsuit alleging malpractice against him or her notify the board by registered letter of the lawsuit and provide information or reports as required by the board.

(2) All information and reports shall be exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and shall be released only upon the order of a court of competent jurisdiction.

History. Acts 1941, No. 94, § 1; 1979, No. 710, §§ 1, 3; 1981, No. 836, § 1; A.S.A. 1947, §§ 72-801, 72-801.1; Acts 1987, No. 101, §§ 1, 2; 1993, No. 176, § 1; 1997, No. 176, § 1; 1997, No. 186, § 1; 2013, No. 1361, § 1; 2015, No. 1156, § 15; 2019, No. 315, § 1556; 2019, No. 579, §§ 1, 2.

Amendments. The 2019 amendment by No. 315 deleted “or regulation” following “rule” in the second sentence of (a)(2).

The 2019 amendment by No. 579 inserted “except as permitted in subdivision (a)(3)(D) of this section” in (a)(3)(B); and added (a)(3)(D).

17-90-108. Requirement to provide eyeglass prescription.

(a)(1) If at the completion of an ophthalmic examination by any licensed optometrist or by any physician who practices as an ophthalmologist in this state the practitioner recommends as a result of the examination that the patient needs eyeglasses of common availability within the state, then the optometrist or physician practicing as an ophthalmologist shall upon request of the patient provide to the patient a complete and accurate written prescription at no additional charge.

(2)(A) Contact lens prescriptions, written and signed, shall be released without additional charge upon request of the patient after the completion of the fitting and upon payment for the examination and fitting.

(B) Contact lens prescriptions released and filled shall be dispensed, sold, and supplied only after positive verification in accordance with the laws of the State of Arkansas and the rules promulgated and administered by the State Board of Optometry.

(3) A written contact lens prescription shall expire one (1) year after the date of the completion of the contact lens fitting unless there is a medical reason that warrants a prescription for less than one (1) year.

(b) The respective licensing boards of optometry and physicians who practice as ophthalmologists and oculists shall provide for the revocation, suspension, or refusal to renew the license of an optometrist, or of a physician who practices as an ophthalmologist or oculist, licensed by them, who repeatedly or flagrantly violates the provisions of this section.

(c) The provisions of this section shall be supplemental to the laws of this state pertaining to the licensing of optometrists and the practice of optometry and the laws pertaining to physicians and surgeons who practice as ophthalmologists and oculists.

History. Acts 1977, No. 878, §§ 1, 2; A.S.A. 1947, §§ 72-822, 72-822n; Acts 2003, No. 866, § 1; 2019, No. 315, § 1557.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (a)(2)(B).

17-90-109. Regulation of contact lenses.

(a) No person, firm, corporation, or other legal entity located outside the State of Arkansas shall fill, ship, mail, or deliver through electronic mail, the internet, alternative channels, or other means contact lenses, vision correcting contact lenses that have been medicated with legend drugs approved by the United States Food and Drug Administration as of January 1, 2009, or prescriptions for contact lenses to a resident of Arkansas without first having:

(1) Registered and paid all applicable fees required by the State Board of Optometry;

(2) Possession of a positively verified written, signed, and unexpired contact lens prescription issued, dispensed, sold, or supplied by a licensed optometrist or ophthalmologist in compliance with the laws of the State of Arkansas and all rules promulgated by the board; and

(3) Registered to do business with the Secretary of State and designated a registered agent for service of process.

(b)(1) If a nonresident person, firm, corporation, or legal entity fails to comply with the requirements of subsection (a) of this section, service of process may be perfected in accordance with the provisions of § 17-90-106.

(2) Alternatively, the optometrist or ophthalmologist dispensing, selling, or supplying the contact lenses shall be deemed a valid agent for service of process for the nonresident person, firm, corporation, or legal entity.

(c)(1) Optometrists and ophthalmologists licensed to practice in Arkansas and a person, firm, corporation, or other legal entity outside the State of Arkansas authorized under subsection (a) of this section may sell, prescribe, or dispense vision correcting contact lenses that have been medicated with legend drugs approved by the United States Food and Drug Administration as of January 1, 2009.

(2) This subsection does not authorize any optometrist, person, firm, or other legal entity to dispense:

(A) Contact lenses medicated with drugs listed in Schedules I and II of the Uniform Controlled Substances Act, § 5-64-101 et seq.;

(B) Medicated contact lenses that are not vision correcting; or

(C) Medicated contact lenses for any purpose other than the diagnosis or treatment of diseases and conditions of the eye, lids, and adnexa.

History. Acts 2003, No. 866, § 2; 2009, No. 449, § 1; 2019, No. 315, § 1558. deleted “and regulations” following “rules” in (a)(2).

Amendments. The 2019 amendment

17-90-111. Loans to optometry students.

(a) The Division of Higher Education shall provide a loan from the Higher Education Grants Fund Account that is in excess of the Southern Regional Education Board grant funds to any optometry student:

(1) Who is bona fide resident of the state;

(2) Who is enrolled in an optometry professional program outside the state; and

(3) For whom any part of the out-of-state tuition is paid by the State of Arkansas through the Southern Regional Education Board grant funds.

(b) A loan authorized by this section:

(1) Shall not exceed five thousand dollars (\$5,000) annually;

(2) Shall be made:

(A) On an annual basis not to exceed the combined total of four (4) years; and

(B) At a rate of interest determined by the division, but not to exceed four percent (4%);

(3) May be forgiven at the rate of one (1) year’s loan for one (1) year’s practice in Arkansas;

(4) May be deferred, but for no longer than five (5) years, for the following reasons:

(A) Military service;

(B) Special training; or

(C) Extraordinary circumstances as determined by the division; and

(5) Shall be in addition to Southern Regional Education Board grant funds.

History. Acts 2007, No. 488, § 1; 2019, No. 910, §§ 2246-2248.

Amendments. The 2019 amendment substituted “Division of Higher Educa-

tion” for “Department of Higher Education” in (a); and, in (b), substituted “division” for “department” in (2)(B) and (4)(C).

SUBCHAPTER 2 — STATE BOARD OF OPTOMETRY

SECTION.

17-90-202. Compensation of members and secretary.

17-90-203. Meetings — Officers — Records.

SECTION.

17-90-204. Powers and duties.

17-90-205. Disposition of funds — Secretary-treasurer’s bond.

17-90-206. Reporting requirements.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause

provided: “It is found and determined by the General Assembly of the State of Ar-

kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-90-202. Compensation of members and secretary.

(a) Members of the State Board of Optometry may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(b) Expense reimbursement and stipends in accordance with § 25-16-901 et seq. shall be paid from the fees collected by the board.

(c) The Secretary-treasurer of the State Board of Optometry shall receive such additional salary as may be fixed by the board, and approved by the Secretary of the Department of Health.

History. Acts 1941, No. 94, § 4; 1957, No. 102, § 1; 1975 (Extended Sess., 1976), No. 1035, § 1; A.S.A. 1947, §§ 6-616, 72-805; reen. Acts 1987, No. 862, § 1; 1997, No. 250, § 163; 2019, No. 910, § 4881.

Amendments. The 2019 amendment added "and approved by the Secretary of the Department of Health" at the end of (c).

17-90-203. Meetings — Officers — Records.

(a) The State Board of Optometry shall meet at least two (2) times each year. At the first regular meeting, the board members shall elect a president, a vice president, and a secretary-treasurer.

(b) A record of its proceedings shall be kept which shall be open for public inspection at reasonable times.

(c) The board shall make a report annually to the Secretary of the Department of Health showing all receipts and disbursements of moneys and a summary of all business transacted during the year.

History. Acts 1941, No. 94, § 3; A.S.A. 1947, § 72-803; Acts 2019, No. 910, § 4882.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Governor" in (c).

17-90-204. Powers and duties.

The State Board of Optometry shall have the following powers in addition to those conferred elsewhere within this chapter:

(1) To make rules for the administration and enforcement of this chapter;

(2) To revoke, suspend, or refuse to renew any certificate of license in the manner and for the causes set forth in this chapter;

(3) To determine what acts on the part of any person licensed under this chapter shall constitute unprofessional conduct;

(4) [Repealed.]

(5) To bring suit in its proper name to enforce or restrain the violation of any provision of this chapter;

(6) To administer oaths, to have an official seal, or to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, papers, or documents pertinent to any matters coming before the board;

(7)(A) To levy civil penalties, after providing notice and a hearing, in an amount not to exceed one thousand dollars (\$1,000) for each violation against those individuals, firms, or corporations found to be in violation of this chapter or rules promulgated thereunder.

(B) These penalties shall be used for the purposes of defraying the expenses of the board and as required for carrying out the provisions of this chapter.

(C) These penalties shall be in addition to other penalties which may be imposed by the board pursuant to this chapter.

(D) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid;

(8) To promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board; and

(9) To establish credentialing requirements for a licensee to administer or perform procedures as listed in § 17-90-101(a)(3)(D).

History. Acts 1941, No. 94, § 8; A.S.A. 1947, § 72-811; Acts 1993, No. 474, § 1; 2017, No. 820, § 10; 2019, No. 315, §§ 1559, 1560; 2019, No. 579, § 3; 2019, No. 910, § 4883.

by No. 315 deleted "and regulations" following "rules" in (1) and (7)(A).

The 2019 amendment by No. 579 added (9).

The 2019 amendment by No. 910 repealed (4).

Amendments. The 2019 amendment

17-90-205. Disposition of funds — Secretary-treasurer's bond.

(a) All renewal fees and all examination and application fees shall be used by the State Board of Optometry to pay its expenses in administering this chapter.

(b)(1) All moneys received by the board shall be disbursed by the Secretary-treasurer of the State Board of Optometry, who shall furnish surety bond.

(2) The Secretary-treasurer of the State Board of Optometry shall keep a true and faithful account of all moneys received and all moneys expended and shall file annually with the Secretary of the Department of Health a report of all financial transactions duly audited by an independent accountant.

(c) All moneys not expended or used by the board to pay expenses in administering this chapter shall be retained by the board from year to

year to be expended for the purposes and intentions expressed in this chapter.

(d) The Secretary-treasurer of the State Board of Optometry shall execute a bond for the state in a sum to be fixed by the board conditioned on the faithful performance of the duties of his or her office.

History. Acts 1915, No. 123, § 6; C. & M. Dig., § 8256; Pope's Dig., § 10754; Acts 1941, No. 94, § 6; 1957, No. 102, § 3; A.S.A. 1947, §§ 72-804, 72-808; Acts 2019, No. 910, § 4884.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Governor" in (b)(2).

17-90-206. Reporting requirements.

(a) The State Board of Optometry shall require every optometrist who meets the requirements for certification to perform authorized laser procedures to report to the board regarding the outcome of the procedures performed in a format as required or directed by the board.

(b) Reports under subsection (a) of this section shall also be sent to the Department of Health.

History. Acts 2019, No. 579, § 4.

SUBCHAPTER 3 — LICENSING

SECTION.

17-90-301. Examinations — Fees.

17-90-302. Licensure by endorsement.

17-90-304. Renewal — Failure to renew.

SECTION.

17-90-305. Revocation, suspension, or refusal to renew — Grounds.

17-90-301. Examinations — Fees.

(a) No person except those already licensed by the State Board of Optometry shall practice optometry until he or she has:

(1) Successfully passed all examinations as the board may require in the rules of the board, to include, but not be limited to, clinical examinations if required; and

(2) Registered and received a certificate of registration which shall have conspicuously printed on its face the definition of optometry set forth in § 17-90-101.

(b) Every applicant for examination shall present satisfactory evidence that he or she is:

(1) At least twenty-one (21) years of age;

(2) A successful candidate having passed all parts of the National Board of Examiners in Optometry examination since January 1, 1997; and

(3) A graduate of a college of optometry that has been accredited by the Accreditation Council on Optometric Education of the American Optometric Association.

(c) All persons making application for examination and for registration shall be required to pay to the Secretary-treasurer of the State

Board of Optometry a fee in a reasonable amount to be fixed by the board.

(d)(1) Beginning July 1, 2003, the board will issue licenses only for optometric physicians to persons who meet:

- (A) The requirements of this section;
- (B) The requirements of § 17-90-401; and
- (C) The requirements of rules of the board.

(2) A person who was licensed as an optometrist before July 1, 2003, and who does not meet the standard for licensure as an optometric physician may continue to renew the license as an optometrist but may only practice in the manner prescribed by the rules of the board.

History. Acts 1941, No. 94, § 5; 1957, No. 102, § 2; A.S.A. 1947, § 72-806; Acts 1991, No. 397, § 1; 2001, No. 506, § 1; 2003, No. 288, § 1; 2007, No. 431, § 1; 2019, No. 315, § 1561; 2019, No. 990, § 85.

by No. 315 deleted “and regulations” following “rules” in (a)(1).

The 2019 amendment by No. 990 substituted “At least” for “over” in (b)(1); deleted former (b)(3) and redesignated the remaining subdivision accordingly.

Amendments. The 2019 amendment

17-90-302. Licensure by endorsement.

(a) Any person from another state desiring to engage in the practice of optometry in this state may be issued licensure by endorsement at the sole discretion of the State Board of Optometry upon satisfactory proof that he or she:

- (1) Is qualified under this chapter;
- (2) Has been issued a certificate or license to practice optometry by a state, territory, the District of Columbia, or Canada having standards of proficiency at least equal to the standards of Arkansas;
- (3) Has engaged in the lawful practice of optometry for a period of three (3) years of the past four (4) years in the other state, territory, the District of Columbia, or Canada and has complied with all the requirements of the Arkansas licensure law at the time of application; and
- (4) Has passed an Arkansas jurisprudence examination.

(b) The applicant shall pay a fee to the Secretary-treasurer of the State Board of Optometry for registration in a reasonable amount to cover the administrative costs of the application process as determined by the State Board of Optometry.

(c) An application for licensure by endorsement shall be accompanied by:

- (1) The fee described in subsection (b) of this section;
- (2) Certification from all other states or territories in which the applicant has practiced;
- (3) A certificate of good standing from each authority which issued the license, setting forth the applicant’s history with the authority, professional ability, continuing education compliance, and other information or data as the State Board of Optometry may deem necessary or expedient;
- (4) A copy of the therapeutic license held by the applicant;

(5) A copy of the cardiopulmonary resuscitation certification held by the applicant;

(6) Transcripts from:

(A) All colleges or universities attended by the applicant; and

(B) An accredited school or college of optometry;

(7) Proof of completion of all parts of the National Board of Examiners in Optometry examination required at the time of graduation for initial licensure sent directly to the State Board of Optometry;

(8) Information on past medical malpractice claims and any disciplinary actions; and

(9) Application to the Identification Bureau of the Division of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation, which shall include the taking of fingerprints.

(d) Upon furnishing satisfactory proof of fitness as contemplated in this section, the State Board of Optometry in its discretion may issue a license to practice optometry to the applicant without further cost except as otherwise provided in this chapter for the renewal of licenses.

History. Acts 1941, No. 94, § 7; 1957, No. 102, § 4; A.S.A. 1947, § 72-809; Acts 1991, No. 397, § 2; 2017, No. 143, § 1; 2017, No. 447, § 1; 2019, No. 990, § 86.

Amendments. The 2019 amendment, in (c)(3), deleted “moral reputation and character” preceding “history” and made a stylistic change.

17-90-304. Renewal — Failure to renew.

(a)(1) Except as provided in subdivision (a)(2) of this section, a registered optometrist shall pay annually a reasonable sum, to be fixed by the State Board of Optometry, to the Secretary-treasurer of the State Board of Optometry as a license renewal fee on or before February 1 each year.

(2) The board shall waive the annual renewal fee for all registered optometrists if the registered optometrist:

(A) Holds a license to practice optometry in the State of Arkansas; and

(B) Is an active duty member of the United States Armed Forces or a member of the Arkansas National Guard on state active duty.

(b) The failure to pay the license renewal fee by any licensee may cause his or her license to be revoked or suspended, or other such penalties as provided in § 17-90-305, after thirty (30) days’ notice.

History. Acts 1941, No. 94, § 6; 1957, No. 102, § 3; A.S.A. 1947, § 72-808; Acts 2001, No. 506, § 3; 2017, No. 204, § 2; 2019, No. 462, § 16.

in (a)(2)(B), substituted “United States Armed Forces or a member of the Arkansas National Guard on state active duty” for “member of the military”; and made a stylistic change.

Amendments. The 2019 amendment,

17-90-305. Revocation, suspension, or refusal to renew — Grounds.

(a) The State Board of Optometry shall have the power to revoke, suspend, place a license on probation for such time as the board shall order and under such conditions as the board may impose, to ensure the health and safety of the citizens of Arkansas, impose a fine of up to one thousand dollars (\$1,000) per violation, refuse to renew a license or reprimand the licensee, or any combination thereof, if the board finds that the individual has committed any of the following offenses:

- (1) Perpetrating a fraud on the public;
- (2) Presenting false information or documentation to the board in an attempt to obtain or to retain a license;
- (3) Conviction of a felony listed under § 17-3-102 or the conviction of a misdemeanor, if the misdemeanor conduct would denote an impairment in the ability to practice optometry;
- (4) Habitual drunkenness;
- (5) Habitual or excessive use of schedule medication or other habit-forming or mind-altering drugs that would impair the ability to practice optometry;
- (6) Violation of the laws of the United States or the State of Arkansas regulating the possession, distribution, and prescribing of schedule medication;
- (7) Flagrant overcharging or billing;
- (8) False representation of materials;
- (9) False or misleading advertising;
- (10) Gross incompetency in the treatment of patients;
- (11) Unprofessional conduct;
- (12) Suffering from mental disease or defect rendering the licensee incompetent to practice optometry as a result of proof given by a licensed medical psychiatrist in the State of Arkansas and in combination with testimony of a licensed optometrist;
- (13) Violation of any provision of the laws of Arkansas regulating the practice of optometry;
- (14) Violation of any rule of the board;
- (15) Violation of any term of probation or order rendered by the board; or
- (16) Having been found in violation of a statute or a rule or regulation governing the practice of optometry by the optometry licensing authority or agency of another state.

(b) In addition to those acts which may be prescribed by the board as unprofessional conduct, the following shall be deemed by the board to be unprofessional:

- (1) The violation of any provision of this chapter; or
- (2) The acceptance of employment either directly or indirectly by a licensed optometrist from an optometrist not licensed in Arkansas or from an unlicensed person, firm, or corporation engaged in any business or profession to assist it, him or her, or them, in practicing optometry in this state.

History. Acts 1941, No. 94, § 9; A.S.A. 1947, § 72-812; Acts 2001, No. 506, § 4; 2007, No. 123, § 2; 2019, No. 315, § 1562; 2019, No. 990, § 87.

by No. 315 deleted “or regulation” following “rule” in (a)(14).

The 2019 amendment by No. 990 inserted “listed under § 17-3-102” in (a)(3).

Amendments. The 2019 amendment

SUBCHAPTER 4 — OPTOMETRIC DRUGS

SECTION.

17-90-401. State Board of Optometry — Powers and duties.

17-90-401. State Board of Optometry — Powers and duties.

The State Board of Optometry shall have the following rights and responsibilities:

(1) To enforce, amend, or repeal the rules promulgated by the board;
 (2)(A) To approve those optometrists who shall be authorized to possess, administer, and prescribe those drugs approved by this subchapter.

(B)(i) No optometrist shall be so approved until he or she has:

(a) Exhibited his or her qualifications by passing an examination prepared or approved by the board; and

(b) Served an internship program established by the board, supervised and certified by a board-certified ophthalmologist, which internship includes at least one hundred (100) hours of supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa.

(ii)(a) The examination shall include, but not be limited to, written questions designed to test knowledge of the proper use and characteristics of the drugs approved by the board.

(b) The examination shall be offered not less often than annually;

(3) To promulgate educational standards, which shall be used as prerequisites to authorization to use those drugs approved in this subchapter. Educational standards shall cover only the area of the proper use and characteristics of the drugs approved by the board and emergency first aid techniques;

(4) To approve, consistent with the rules promulgated by the board, those acts, services, procedures, and practices which may be performed by a licensed optometrist and, before authorization, by appropriate examination, establish the competence of every optometrist to perform the approved acts, services, procedures, and practices;

(5)(A) To prohibit any optometrist who is a graduate of a school or college of optometry as of July 20, 1987, who has not already successfully completed a postgraduate course of study of transcript quality in ocular therapy and pharmacology from an accredited school or college of optometry, which complies with all the prerequisites and requirements of the board and this subchapter, from being approved to perform any of the additional acts, services, procedures, and practices which are specifically authorized in § 17-90-101(a) and

§ 17-90-403 until he or she has successfully complied with all the prerequisites and requirements of the board and this subchapter.

(B) The express purpose of this subdivision (5) is to prohibit the “grandfathering” of currently licensed optometrists unless and until they have completed the prerequisites and requirements of the board and this subchapter established by this subdivision (5). Nothing in this subdivision (5) shall be construed to prohibit any optometrist currently licensed from continuing to practice optometry and be relicensed, but until he or she has met the requirements of this subchapter and the rules of the board, he or she shall not be allowed to utilize the additional treatments provided for in this subchapter;

(6) To promulgate rules governing the prescribing, administering, and use of all drugs authorized in this chapter by all licensed and board-certified primary care optometrists in the diagnosis, treatment, or management only of conditions of the human eye, lid, adnexa, or visual system; and

(7) To promulgate rules which authorize board-certified primary care optometrists to order any procedure or laboratory test necessary in the examination, diagnosis, treatment, or management of diseases or conditions of the human eye, lid, adnexa, or visual system.

History. Acts 1941, No. 94, § 1; 1979, No. 710, § 1; 1981, No. 836, § 1; 1985, No. 875, § 1; A.S.A. 1947, § 72-801; Acts 1987, No. 101, § 1; 1997, No. 176, § 2; 1997, No. 186, § 2; 2019, No. 315, §§ 1563–1566.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (1), (4), the second sentence of (5)(B), (6), and (7).

SUBCHAPTER 5 — IMPAIRED OPTOMETRIST TREATMENT PROGRAM

SECTION.

17-90-503. Definitions.

17-90-503. Definitions.

As used in this subchapter:

(1) “Impaired” or “impairment” means the presence of the diseases of alcoholism, drug abuse, or mental illness;

(2) “Impaired Optometrist Treatment program” means the State Board of Optometry-approved or sponsored program for the detection, intervention, and monitoring of impaired providers;

(3)(A) “Professional incompetence” means the inability or failure of an optometrist to practice his or her profession with reasonable skill and safety.

(B) Impairment in and of itself shall not give rise to a presumption of professional incompetence; and

(4) “Treatment program” means a plan of care and rehabilitation services provided by those organizations and persons authorized to provide such services for impaired providers taking part in the programs provided under this subchapter.

History. Acts 1997, No. 176, § 4; 1997, No. 186, § 4; 2019, No. 386, § 42.

Amendments. The 2019 amendment repealed former (1).

CHAPTER 91

OSTEOPATHS

SECTION.

17-91-101. Osteopathic physician — Licensing requirements.

Effective Dates. Acts 2019, No. 607, § 2: Mar. 29, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the State of Arkansas seeks to license more physicians to serve patients within the state, especially in primary care; that osteopathic physicians can aid in providing needed health care throughout the state; that two (2) osteopathic schools in Arkansas will have their first classes graduating in spring of 2019; that without permitting the status of legal residency to be a requirement to gain licensure as well as citizenship, the number of graduates of these schools who can remain in Arkansas to practice will be limited and that this act is immediately necessary to ensure that graduates of osteopathic schools are able to obtain osteo-

pathic licensure when they complete their education in the spring of 2019 and forthcoming graduates of osteopathic schools and to create a greater availability of osteopathic physicians for the practice of osteopathic medicine in this state to improve the health of the citizens of the State of Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

17-91-101. Osteopathic physician — Licensing requirements.

(a) The Arkansas State Medical Board shall accept for licensure by examination any person who:

- (1) Is at least twenty-one (21) years of age;
- (2) Is a citizen or a legal resident of the United States;
- (3) Has not been found guilty of acts constituting unprofessional conduct as defined in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.;
- (4) Is a graduate of an osteopathic college of medicine whose course of study has been recognized by the American Osteopathic Association Commission on Osteopathic College Accreditation; and
- (5) Has completed a one-year internship in a hospital approved by the American Medical Association or the American Osteopathic Association.

(b) Applicants for such a licensure shall pay the fees required by the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1971, No. 650, §§ 1, 2; A.S.A. 1947, §§ 72-911, 72-912; Acts 2001, No. 929, § 2; 2019, No. 607, § 1; 2019, No. 910, § 2249; 2019, No. 990, § 88.

Amendments. The 2019 amendment by No. 607 inserted “or a legal resident” in (a)(2); and inserted “found” in (a)(4) [now (a)(3)].

The 2019 amendment By No. 910 substituted “Division of Elementary and Secondary Education” for “Department of Education” in (a)(5) [now (a)(4)].

The 2019 amendment by No. 990 deleted former (a)(3) and redesignated the remaining subdivisions accordingly.

CHAPTER 92

PHARMACISTS AND PHARMACIES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF PHARMACY.
3. LICENSED PHARMACISTS.
4. PHARMACIES.
5. GENERIC DRUGS AND PRICE LISTS.
6. HOSPITAL PHARMACIES ACT.
7. PROGRAM FOR PHARMACISTS IMPAIRED BY CHEMICAL DEPENDENCY.
8. CERTIFICATION AND REGISTRATION OF PHARMACIST ASSISTANTS.
9. SUPPLIERS.
11. PRESCRIPTION DRUG REDISPENSING PROGRAM.
12. ARKANSAS PHARMACY AUDIT BILL OF RIGHTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-92-101. Definitions. [Effective until January 1, 2022.]
- 17-92-101. Definitions. [Effective January 1, 2022.]
- 17-92-108. Fees.
- 17-92-109, 17-92-110. [Repealed.]
- 17-92-112. [Repealed.]
- 17-92-115. Requirements for administering and dispensing under statewide protocol.

SECTION.

- 17-92-117. Prescriptions for all health-care professionals — Definition.
- 17-92-118. Point-of-care treatment. [Effective January 1, 2022.]
- 17-92-119. Prescription delivery standards — Definition.
- 17-92-120. New prescription requests and new refill requests from prescriber.

Effective Dates. Acts 2021, No. 503, § 6: Effective date clause provided: “Sections 1-4 take effect on and after January 1, 2022.”

17-92-101. Definitions. [Effective until January 1, 2022.]

As used in this chapter:

(1) “Biological product” means a biological product as defined by 42 U.S.C. § 262(i)(1), as it existed on January 1, 2019;

(2) “Credentialing” means the issuance of or approval by the Arkansas State Board of Pharmacy of a credential issued to a pharmacist by an agency approved by the Arkansas State Board of Pharmacy certify-

ing that the pharmacist has met the standards of competency established by the Arkansas State Board of Pharmacy for pharmacy services necessitating a credential;

(3) “Dentist” means a practitioner of dentistry duly licensed under the laws of this or some other state;

(4)(A) “Disease state management” means a strategy that utilizes a team-oriented, multidisciplinary approach to improve healthcare outcomes and quality of care, and when possible, to control healthcare cost through management of targeted chronic disease states.

(B) Disease state management focuses on improving health care from prevention to diagnosis and treatment to ongoing follow-up.

(C) Disease state management will involve, but not be limited to, patient education, self-care techniques, and outpatient drug therapy management pursuant to a patient care plan;

(5) “Drug” shall include all medicines and preparations recognized in the United States Pharmacopeia — National Formulary as substances intended to be used for the care, mitigation, or prevention of disease of either man or other animals;

(6) “Generically equivalent” means a drug that is pharmaceutically and therapeutically equivalent to the drug prescribed;

(7) “Interchangeable biological product” means a biological product that is interchangeable as defined by 42 U.S.C. § 262(i)(3), as it existed on January 1, 2019;

(8)(A) “Licensed pharmacist” means a person holding a license under the provisions of this chapter.

(B) A “licensed pharmacist” shall be considered an individual healthcare provider;

(9) “Medicine” means a drug or preparation of drugs in suitable form for use as a curative or remedial substance;

(10) “Optometrist” means a practitioner of optometry duly licensed under the laws of this state;

(11) “Patient care plan” means a written course of action that is patient- or physician- or pharmacist-specific and disease-specific for helping a patient to achieve outcomes that improve a patient’s quality of life;

(12) “Pharmaceutically equivalent” means drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical, compendious, or other applicable standards of strength, quality, and purity according to the United States Pharmacopeia — National Formulary or another nationally recognized compendium;

(13) “Pharmacy” means the place licensed by the Arkansas State Board of Pharmacy in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail;

(14) “Pharmacy care” means the process by which a pharmacist in consultation with the prescribing practitioner identifies, resolves, and prevents potential and actual drug-related problems and optimizes patient therapy outcomes through the responsible provision of drug

therapy or disease state management for the purpose of achieving any of the following definite outcomes that improve a patient's quality of life:

- (A) Cure of disease;
- (B) Elimination or reduction of a patient's symptomology;
- (C) Arresting or slowing a disease process; or
- (D) Preventing a disease or symptomology;

(15) "Physician" means a practitioner of medicine duly licensed under the laws of this or some other state;

(16) "Poisons" means any drug, chemical, medicine, or preparation liable to be destructive to adult human life in quantities of sixty (60) grains or less;

(17)(A) "Practice of pharmacy" means the healthcare provider profession of:

(i)(a) Dispensing, selling, distributing, transferring possession of, vending, bartering, or, in accordance with rules adopted by the Arkansas State Board of Pharmacy, administering drugs, medicines, poisons, or chemicals that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription and order of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals.

(b) Except as limited by rules adopted by the Arkansas State Board of Pharmacy, a pharmacist has the ability to administer medications.

(c) A pharmacist may prescribe, administer, deliver, distribute, or dispense medications that treat adverse reactions associated with the administration of vaccines and immunizations, vaccines, and immunizations to or for a person three (3) years of age or older.

(d) A pharmacist who prescribes and administers vaccines and immunizations other than for influenza or coronavirus 2019 (COVID-19) to a person who is three (3) years of age to six (6) years of age shall:

- (1) Participate in the federal Vaccines for Children Program; and
- (2) Inform the person who is three (3) years of age to six (6) years of age and adult caregivers accompanying the person who is three (3) years of age to six (6) years of age of the importance of a well-child visit with a pediatrician or other licensed primary care provider and recommend a well-child visit at least yearly.

(e)(1) A pharmacist may administer medications other than medications that treat adverse reactions associated with the administration of vaccines and immunizations, vaccines, and immunizations under a patient-specific order or prescription or general written protocol.

(2) The administration of the medication under subdivision (17)(A)(i)(e)(1) of this section is subject to reporting to the prescribing physician, if applicable.

(f) A general written protocol and patient-specific orders or prescriptions under subdivision (17)(A)(i)(e) of this section shall be from

a physician licensed by the Arkansas State Medical Board and practicing in Arkansas or within fifty (50) miles of the Arkansas border.

(g) Under a statewide protocol, a pharmacist may initiate therapy and administer or dispense, or both, drugs that include Naloxone, nicotine replacement therapy products, and oral contraceptives;

(ii) Placing, packing, pouring, or putting into a container for dispensing, sale, distribution, transfer of, possession of, vending, or bartering any drug, medicine, poison, or chemical that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals;

(iii) Placing in or affixing upon any container described in subdivision (17)(A)(ii) of this section a label required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(iv) Preparing, typing, or writing labels to be placed in or affixed on any container described in subdivision (17)(A)(ii) of this section, which label is required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(v) Interpreting prescriptions for drugs, medicines, poisons, or chemicals issued by practitioners authorized by law to prescribe drugs, medicines, poisons, or chemicals that may be sold or dispensed only on prescription;

(vi) Selecting, taking from, and replacing upon shelves in the prescription department of a pharmacy or apothecary drugs, medicines, chemicals, or poisons that are required by the laws of the United States or the State of Arkansas to be sold or dispensed only on prescription of a practitioner authorized by law to prescribe them;

(vii) Compounding, mixing, preparing, or combining drugs, medicines, chemicals, or poisons that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe them;

(viii) Advising and providing information concerning utilization of drugs and devices and participation in drug utilization reviews;

(ix)(a) Performing a specific act of drug therapy management or disease state management delegated to a pharmacist for an individual patient based upon a written protocol or a patient care plan approved by a physician, who shall be licensed in this state under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b) Drug therapy management shall not include the selection of drug products not prescribed by the physician unless the drug products are either named in the physician-initiated protocol or the physician-approved patient care plan;

- (x) Providing pharmacy care; and
- (xi) Providing pharmacokinetic services.

(B) The provisions of subdivisions (17)(A) and (17)(C) of this section shall not apply to employees of wholesale drug companies or other drug distributors who do not fill prescriptions or sell or dispense drugs to the consumer.

(C)(i) The Arkansas State Board of Pharmacy may permit pharmacy technicians other than pharmacists or interns to perform some or all of those functions described in Arkansas State Board of Pharmacy rules under the direct, personal supervision of a licensed pharmacist under rules defining the minimum qualifications of such employees, the ratio of pharmacy technicians to supervising pharmacists, and the scope of the duties, practices, and procedures that the Arkansas State Board of Pharmacy determines will promote the delivery of competent, professional pharmaceutical services and promote the public health and welfare.

(ii) A pharmacy technician may administer vaccines and immunizations to a person three (3) years of age or older if delegated to do so by a supervising pharmacist, but may not administer other medications.

(iii) The conduct of a pharmacy technician is the responsibility of the pharmacist-in-charge and supervising pharmacist of the pharmacy who shall not permit the employee to perform any act, task, or function that involves the exercise of independent judgment by the employee.

(iv) Pharmacy products prepared by pharmacy technicians shall be verified for accuracy by the supervising pharmacist before release for patient use, and the verification shall be documented.

(v) The use of pharmacy technicians in a manner not authorized by this chapter or rules promulgated hereunder shall be unprofessional conduct by the pharmacist-in-charge and the supervising pharmacist.

(vi) It is recognized that hospital pharmacy technicians as defined in § 17-92-602(4) are governed by the Hospital Pharmacies Act, § 17-92-601 et seq., and related Arkansas State Board of Pharmacy rules developed under the Hospital Pharmacies Act, § 17-92-601 et seq.;

(18)(A) "Prescription" means an order for medicine or medicines usually written as a formula by a physician, optometrist, dentist, veterinarian, or other licensed medicinal practitioner. It contains the names and quantities of the desired substance, with instructions to the pharmacist for its preparation and to the patient for the use of the medicine at a particular time and may authorize the pharmacist to substitute a therapeutically equivalent drug that is at a lower cost to the patient and communicate that authorization by any generally accepted means of communication of a prescription from a prescriber to a pharmacist.

(B) A substitution of a therapeutically equivalent drug shall occur only after the prescriber grants such authorization for each prescription.

(C)(i) Before dispensing, the pharmacist shall discuss verbally any suggested substitution with the patient and inform the patient that the patient has a right to refuse the substitution.

(ii) The discussion under subdivision (18)(C)(i) of this section shall include without limitation:

(a) Notification to the patient that the therapeutically equivalent drug does not contain the identical active ingredient present in the prescribed drug; and

(b) All differences in dosage and frequency between the prescribed drug and the therapeutically equivalent drug.

(D) The pharmacist shall send notice of the substitution to the prescriber in writing or by electronic communication within twenty-four (24) hours after the drug is dispensed to the patient.

(E) Subdivision (18)(B) of this section does not apply to specific acts of drug therapy management or disease state management delegated to a pharmacist based upon a written protocol or patient care plan approved by a physician under subdivision (17)(A)(ix) of this section;

(19) "Proprietary medicines", when not otherwise limited, means remedies that a certain individual or individuals have the exclusive right to manufacture or sell;

(20) "Statewide protocol" means a standardized procedure or protocol approved by the Arkansas State Board of Pharmacy and the Arkansas State Medical Board authorizing a pharmacist to initiate therapy and administer or dispense, or both, a drug or device;

(21) "Supervision" means under the direct charge or direction of and does not contemplate any continued absence of such supervision;

(22) "Therapeutic class" means a group of similar drug products that have the same or similar mechanisms of action and are used to treat a specific condition;

(23) "Therapeutically equivalent" means drug products from the same therapeutic class that if administered in appropriate amounts will provide the same therapeutic effect, identical in duration and intensity;

(24) "Veterinarian" means a practitioner of veterinary medicine duly licensed under the laws of this or some other state; and

(25) "Written protocol" means a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Arkansas State Medical Board under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1929, No. 72, § 1; Pope's A.S.A. 1947, §§ 72-1001, 72-1001.1, 72-Dig., § 4624; Acts 1955, No. 57, preliminary section; 1971, No. 26, §§ 1, 3; 1983, 1044, 72-1046; Acts 1987, No. 101, § 3; 1991, No. 740, § 1; 1997, No. 437, §§ 1, 2; No. 511, §§ 2, 13; 1985, No. 616, § 2; 1997, No. 1204, §§ 1, 2; 1999, No. 105,

§§ 1-5; 2001, No. 801, § 1; 2001, No. 910, § 1; 2003, No. 1473, § 34; 2009, No. 355, § 1; 2011, No. 147, § 1; 2013, No. 274, §§ 1-3; 2013, No. 536, § 1; 2017, No. 284, §§ 1-3; 2019, No. 315, § 1567-1570; 2019, No. 386, § 43; 2019, No. 637, § 1; 2019, No. 651, § 1; 2019, No. 652, § 1; 2021, No. 63, § 1; 2021, No. 406, § 1; 2021, No. 407, § 1; 2021, No. 408, § 1.

Publisher's Notes. For text of section effective January 1, 2022, see the following version.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (16) [now (17)] (A)(i)(a), the first sentence of (16) [now (17)] (C)(i) twice, (16) [now (17)] (C)(iv), and (16) [now (17)] (C)(v); and substituted "rule" for "regulation" in (24) [now (25)].

The 2019 amendment by No. 386 repealed former (1).

The 2019 amendment by No. 637 added (25) [now (1)] and (26) [now (7)].

The 2019 amendment by No. 651 substituted "rules" for "regulations" in (16) [now (17)] (A)(i)(a); substituted "drugs that include Naloxone and nicotine replacement therapy products" for "Naxolone" in (16) [now (17)] (A)(i)(h); and made stylistic changes.

The 2019 amendment by No. 652, in (16) [now (17)] (A)(i)(d), substituted "general written protocol and subject to reporting required under § 20-15-1203 if written consent of the parent or legal guardian of the minor is obtained before the administration of the vaccine or immunization" for "patient-specific order or prescription and subject to reporting of the administration to the prescribing physician together with any reporting required under § 20-15-1203".

The 2021 amendment by No. 63 deleted "disease state management or other" preceding "pharmacy services" in (2).

The 2021 amendment by No. 406 rewrote former (17)(A)(i)(c)-(f) as (17)(A)(i)(c)-(e); redesignated former (17)(A)(i)(g) and (h) as (17)(A)(i)(f) and (g); and updated internal references.

The 2021 amendment by No. 407 deleted the last sentence in (17)(C)(i); inserted (17)(C)(ii) and redesignated the remaining subdivisions accordingly; and made stylistic changes.

The 2021 amendment by No. 408 added "and oral contraceptives" in (17)(A)(i)(h) [now (17)(A)(i)(g)].

17-92-101. Definitions. [Effective January 1, 2022.]

As used in this chapter:

(1) "Biological product" means a biological product as defined by 42 U.S.C. § 262(i)(1), as it existed on January 1, 2019;

(2) "Credentialing" means the issuance of or approval by the Arkansas State Board of Pharmacy of a credential issued to a pharmacist by an agency approved by the Arkansas State Board of Pharmacy certifying that the pharmacist has met the standards of competency established by the Arkansas State Board of Pharmacy for pharmacy services necessitating a credential;

(3) "Dentist" means a practitioner of dentistry duly licensed under the laws of this or some other state;

(4)(A) "Disease state management" means a strategy that utilizes a team-oriented, multidisciplinary approach to improve healthcare outcomes and quality of care, and when possible, to control healthcare cost through management of targeted chronic disease states.

(B) Disease state management focuses on improving health care from prevention to diagnosis and treatment to ongoing follow-up.

(C) Disease state management will involve, but not be limited to, patient education, self-care techniques, and outpatient drug therapy management pursuant to a patient care plan;

(5) "Drug" shall include all medicines and preparations recognized in the United States Pharmacopeia — National Formulary as substances

intended to be used for the care, mitigation, or prevention of disease of either man or other animals;

(6) “Generically equivalent” means a drug that is pharmaceutically and therapeutically equivalent to the drug prescribed;

(7) “Interchangeable biological product” means a biological product that is interchangeable as defined by 42 U.S.C. § 262(i)(3), as it existed on January 1, 2019;

(8)(A) “Licensed pharmacist” means a person holding a license under the provisions of this chapter.

(B) A “licensed pharmacist” shall be considered an individual healthcare provider;

(9) “Medicine” means a drug or preparation of drugs in suitable form for use as a curative or remedial substance;

(10) “Optometrist” means a practitioner of optometry duly licensed under the laws of this state;

(11) “Patient care plan” means a written course of action that is patient- or physician- or pharmacist-specific and disease-specific for helping a patient to achieve outcomes that improve a patient’s quality of life;

(12) “Pharmaceutically equivalent” means drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical, compendious, or other applicable standards of strength, quality, and purity according to the United States Pharmacopeia — National Formulary or another nationally recognized compendium;

(13) “Pharmacy” means the place licensed by the Arkansas State Board of Pharmacy in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail;

(14) “Pharmacy care” means the process by which a pharmacist in consultation with the prescribing practitioner identifies, resolves, and prevents potential and actual drug-related problems and optimizes patient therapy outcomes through the responsible provision of drug therapy or disease state management for the purpose of achieving any of the following definite outcomes that improve a patient’s quality of life:

(A) Cure of disease;

(B) Elimination or reduction of a patient’s symptomology;

(C) Arresting or slowing a disease process; or

(D) Preventing a disease or symptomology;

(15) “Physician” means a practitioner of medicine duly licensed under the laws of this or some other state;

(16) “Poisons” means any drug, chemical, medicine, or preparation liable to be destructive to adult human life in quantities of sixty (60) grains or less;

(17)(A) “Practice of pharmacy” means the healthcare provider profession of:

(i)(a) Dispensing, selling, distributing, transferring possession of, vending, bartering, or, in accordance with rules adopted by the

Arkansas State Board of Pharmacy, administering drugs, medicines, poisons, or chemicals that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription and order of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals.

(b) Except as limited by rules adopted by the Arkansas State Board of Pharmacy, a pharmacist has the ability to administer medications.

(c) A pharmacist may prescribe, administer, deliver, distribute, or dispense medications that treat adverse reactions associated with the administration of vaccines and immunizations, vaccines, and immunizations to or for a person three (3) years of age or older.

(d) A pharmacist who prescribes and administers vaccines and immunizations other than for influenza or coronavirus 2019 (COVID-19) to a person who is three (3) years of age to six (6) years of age shall:

(1) Participate in the federal Vaccines for Children Program; and

(2) Inform the person who is three (3) years of age to six (6) years of age and adult caregivers accompanying the person who is three (3) years of age to six (6) years of age of the importance of a well-child visit with a pediatrician or other licensed primary care provider and recommend a well-child visit at least yearly.

(e)(1) A pharmacist may administer medications other than medications that treat adverse reactions associated with the administration of vaccines and immunizations, vaccines, and immunizations under a patient-specific order or prescription or general written protocol.

(2) The administration of the medication under subdivision (17)(A)(i)(e)(1) of this section is subject to reporting to the prescribing physician, if applicable.

(f) A general written protocol and patient-specific orders or prescriptions under subdivision (17)(A)(i)(e) of this section shall be from a physician licensed by the Arkansas State Medical Board and practicing in Arkansas or within fifty (50) miles of the Arkansas border.

(g) Under a statewide protocol, a pharmacist may initiate therapy and administer or dispense, or both, drugs that include Naloxone, nicotine replacement therapy products, and oral contraceptives;

(ii) Placing, packing, pouring, or putting into a container for dispensing, sale, distribution, transfer of, possession of, vending, or bartering any drug, medicine, poison, or chemical that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe drugs, medicines, poisons, or chemicals;

(iii) Placing in or affixing upon any container described in subdivision (17)(A)(ii) of this section a label required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(iv) Preparing, typing, or writing labels to be placed in or affixed on any container described in subdivision (17)(A)(ii) of this section, which label is required to be placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon prescription of a practitioner authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

(v) Interpreting prescriptions for drugs, medicines, poisons, or chemicals issued by practitioners authorized by law to prescribe drugs, medicines, poisons, or chemicals that may be sold or dispensed only on prescription;

(vi) Selecting, taking from, and replacing upon shelves in the prescription department of a pharmacy or apothecary drugs, medicines, chemicals, or poisons that are required by the laws of the United States or the State of Arkansas to be sold or dispensed only on prescription of a practitioner authorized by law to prescribe them;

(vii) Compounding, mixing, preparing, or combining drugs, medicines, chemicals, or poisons that under the laws of the United States or the State of Arkansas may be sold or dispensed only on the prescription of a practitioner authorized by law to prescribe them;

(viii) Advising and providing information concerning utilization of drugs and devices and participation in drug utilization reviews;

(ix)(a) Performing a specific act of drug therapy management or disease state management delegated to a pharmacist for an individual patient based upon a written protocol or a patient care plan approved by a physician, who shall be licensed in this state under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b) Drug therapy management shall not include the selection of drug products not prescribed by the physician unless the drug products are either named in the physician-initiated protocol or the physician-approved patient care plan;

(x)(a) Providing pharmacy care.

(b) A pharmacist may treat the following conditions within the framework of a statewide written protocol:

(1) Influenza;

(2) Pharyngitis caused by streptococcus A; or

(3) Other health conditions that can be screened utilizing the waived test under the Clinical Laboratory Improvement Amendments of 1988, that may be adopted by rule of the Arkansas State Board of Pharmacy, in consultation with and upon approval of the Arkansas State Medical Board.

(c) A pharmacist shall only treat conditions for which the pharmacist has tested and that are approved under subdivision (17)(A)(x)(b) of this section.

(d)(1) The Arkansas State Board of Pharmacy, with consultation and upon approval of the Arkansas State Medical Board, shall adopt by rule:

(A) A formulary of medicinal drugs that a pharmacist may pre-

scribe for treatment of conditions listed in subdivision (17)(A)(x)(b) of this section; and

(B) A written statewide protocol for conditions listed in subdivision (17)(A)(x)(b) of this section, which shall include without limitation the age of people that can be treated and medications to be used to treat people under this subdivision.

(2) The formulary shall include medicinal drugs approved by the United States Food and Drug Administration which are indicated for treatment of these conditions, including without limitation any over-the-counter medication.

(3) The formulary shall not include any controlled substance in Schedules I — IV or 21 U.S.C. § 812, as existing on January 1, 2021.

(e) A pharmacist may write a prescription for over-the-counter medications, supplies, and devices; and

(xi) Providing pharmacokinetic services.

(B) The provisions of subdivisions (17)(A) and (17)(C) of this section shall not apply to employees of wholesale drug companies or other drug distributors who do not fill prescriptions or sell or dispense drugs to the consumer.

(C)(i) The Arkansas State Board of Pharmacy may permit pharmacy technicians other than pharmacists or interns to perform some or all of those functions described in Arkansas State Board of Pharmacy rules under the direct, personal supervision of a licensed pharmacist under rules defining the minimum qualifications of such employees, the ratio of pharmacy technicians to supervising pharmacists, and the scope of the duties, practices, and procedures that the Arkansas State Board of Pharmacy determines will promote the delivery of competent, professional pharmaceutical services and promote the public health and welfare.

(ii) A pharmacy technician may administer vaccines and immunizations to a person three (3) years of age or older if delegated to do so by a supervising pharmacist, but may not administer other medications.

(iii) The conduct of a pharmacy technician is the responsibility of the pharmacist-in-charge and supervising pharmacist of the pharmacy who shall not permit the employee to perform any act, task, or function that involves the exercise of independent judgment by the employee.

(iv) Pharmacy products prepared by pharmacy technicians shall be verified for accuracy by the supervising pharmacist before release for patient use, and the verification shall be documented.

(v) The use of pharmacy technicians in a manner not authorized by this chapter or rules promulgated hereunder shall be unprofessional conduct by the pharmacist-in-charge and the supervising pharmacist.

(vi) It is recognized that hospital pharmacy technicians as defined in § 17-92-602(4) are governed by the Hospital Pharmacies Act, § 17-92-601 et seq., and related Arkansas State Board of Pharmacy

rules developed under the Hospital Pharmacies Act, § 17-92-601 et seq.;

(18)(A)(i) "Prescription" means an order for medicine or medicines usually written as a formula by a physician, optometrist, dentist, veterinarian, or other licensed medicinal practitioner.

(ii) A prescription contains the names and quantities of the desired substance, with instructions to the pharmacist for its preparation and to the patient for the use of the medicine at a particular time and may authorize the pharmacist to substitute a therapeutically equivalent drug that is at an equal or lower cost to the patient and communicate that authorization by any generally accepted means of communication of a prescription from a prescriber to a pharmacist.

(B)(i) A pharmacist whose practice is located within this state may substitute one (1) medication for a therapeutically equivalent medication.

(ii) However, a pharmacist shall not substitute one (1) medication for a therapeutically equivalent medication if:

(a) A prescription is in writing and the prescriber indicates in his or her own handwriting by name or initial that no substitution is to be made;

(b) A prescription is not in writing and the prescriber expressly indicates that the prescription is to be dispensed as communicated; or

(c) The Arkansas State Board of Pharmacy has determined that a therapeutically equivalent medication should not be substituted and has notified all pharmacists of that determination.

(C)(i) Before dispensing, the pharmacist shall discuss verbally any suggested substitution with the patient and inform the patient that the patient has a right to refuse the substitution.

(ii) The discussion under subdivision (18)(C)(i) of this section shall include without limitation:

(a) Notification to the patient that the therapeutically equivalent drug does not contain the identical active ingredient present in the prescribed drug; and

(b) All differences in dosage and frequency between the prescribed drug and the therapeutically equivalent drug.

(D) The pharmacist shall send notice of the substitution to the prescriber in writing or by electronic communication within twenty-four (24) hours after the drug is dispensed to the patient.

(E) Subdivision (18)(B) of this section does not apply to specific acts of drug therapy management or disease state management delegated to a pharmacist based upon a written protocol or patient care plan approved by a physician under subdivision (17)(A)(ix) of this section;

(19) "Proprietary medicines", when not otherwise limited, means remedies that a certain individual or individuals have the exclusive right to manufacture or sell;

(20) "Statewide protocol" means a standardized procedure or protocol approved by the Arkansas State Board of Pharmacy and the

Arkansas State Medical Board authorizing a pharmacist to initiate therapy and administer or dispense, or both, a drug or device;

(21) "Supervision" means under the direct charge or direction of and does not contemplate any continued absence of such supervision;

(22) "Therapeutic class" means a group of similar drug products that have the same or similar mechanisms of action and are used to treat a specific condition;

(23) "Therapeutically equivalent" means drug products from the same therapeutic class that if administered in appropriate amounts will provide the same therapeutic effect, identical in duration and intensity;

(24) "Veterinarian" means a practitioner of veterinary medicine duly licensed under the laws of this or some other state; and

(25) "Written protocol" means a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Arkansas State Medical Board under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1929, No. 72, § 1; Pope's Dig., § 4624; Acts 1955, No. 57, preliminary section; 1971, No. 26, §§ 1, 3; 1983, No. 511, §§ 2, 13; 1985, No. 616, § 2; A.S.A. 1947, §§ 72-1001, 72-1001.1, 72-1044, 72-1046; Acts 1987, No. 101, § 3; 1991, No. 740, § 1; 1997, No. 437, §§ 1, 2; 1997, No. 1204, §§ 1, 2; 1999, No. 105, §§ 1-5; 2001, No. 801, § 1; 2001, No. 910, § 1; 2003, No. 1473, § 34; 2009, No. 355, § 1; 2011, No. 147, § 1; 2013, No. 274, §§ 1-3; 2013, No. 536, § 1; 2017, No. 284, §§ 1-3; 2019, No. 315, § 1567-1570; 2019, No. 386, § 43; 2019, No. 637, § 1; 2019, No. 651, § 1; 2019, No. 652, § 1; 2021, No. 63, § 1; 2021, No. 406, § 1; 2021, No. 407, § 1; 2021, No. 408, § 1; 2021, No. 503, §§ 2, 3.

A.C.R.C. Notes. Acts 2021, No. 503, § 1, provided: "Purpose. It is the purpose of this act to authorize pharmacists in Arkansas to test and screen for health conditions that the Centers for Medicare and Medicaid Services has determined qualify for a waiver under the federal Clinical Laboratory Improvement Amendments of 1988, the federal regulations adopted, or any established screening procedures that can safely be performed by a pharmacist."

Publisher's Notes. For text of section effective until January 1, 2022, see the preceding version.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regula-

tions" in (16) [now (17)] (A)(i)(a), the first sentence of (16) [now (17)] (C)(i) twice, (16) [now (17)] (C)(iv), and (16) [now (17)] (C)(v); and substituted "rule" for "regulation" in (24) [now (25)].

The 2019 amendment by No. 386 repealed former (1).

The 2019 amendment by No. 637 added (25) [now (1)] and (26) [now (7)].

The 2019 amendment by No. 651 substituted "rules" for "regulations" in (16) [now (17)] (A)(i)(a); substituted "drugs that include Naloxone and nicotine replacement therapy products" for "Naxolone" in (16) [now (17)] (A)(i)(h); and made stylistic changes.

The 2019 amendment by No. 652, in (16) [now (17)] (A)(i)(d), substituted "general written protocol and subject to reporting required under § 20-15-1203 if written consent of the parent or legal guardian of the minor is obtained before the administration of the vaccine or immunization" for "patient-specific order or prescription and subject to reporting of the administration to the prescribing physician together with any reporting required under § 20-15-1203".

The 2021 amendment by No. 63 deleted "disease state management or other" preceding "pharmacy services" in (2).

The 2021 amendment by No. 406 rewrote former (17)(A)(i)(c)-(f) as (17)(A)(i)(c)-(e); redesignated former (17)(A)(i)(g) and (h) as (17)(A)(i)(f) and (g); and updated internal references.

The 2021 amendment by No. 407 deleted the last sentence in (17)(C)(i); inserted (17)(C)(ii) and redesignated the remaining subdivisions accordingly; and made stylistic changes.

The 2021 amendment by No. 408 added "and oral contraceptives" in (17)(A)(i)(h) [now (17)(A)(i)(g)].

The 2021 amendment by No. 503 redesignated former (17)(A)(x) as (17)(A)(x)(a); added (17)(A)(x)(b)-(e); redesignated (18)(A) as (18)(A)(i) and (ii); in (18)(A)(ii),

substituted "A prescription" for "It" and "an equal or lower cost" for "a lower cost"; and rewrote (18)(B).

U.S. Code. The Clinical Laboratory Improvement Amendments of 1988, referred to in this section, are codified at 42 U.S.C. § 263a.

Effective Dates. Acts 2021, No. 503, § 6: Effective date clause provided: "Sections 1-4 take effect on and after January 1, 2022."

17-92-108. Fees.

(a) The fees charged by the Arkansas State Board of Pharmacy for the various examinations, permits, licenses, certificates, credentials, and books issued by the board shall be as follows:

(1) The fee for examination for a license as a licensed pharmacist upon examination shall not exceed twenty-five dollars (\$25.00) plus the actual cost of the examination;

(2) The fee for a license as a licensed pharmacist from another state by reciprocity and without examination shall not exceed two hundred dollars (\$200);

(3)(A) The fee for the initial license as a licensed pharmacist shall not exceed seventy-five dollars (\$75.00).

(B) The fee for the renewal of a license as a licensed pharmacist shall not exceed seventy-five dollars (\$75.00) per year;

(4)(A)(i) The fee for issuance of a pharmacy permit for the first time to operate an in-state pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate an in-state pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in an in-state pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(B)(i) The fee for issuance of a permit for the first time to operate a specialty pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate a specialty pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in a specialty pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(C)(i) The fee for issuance of a permit for the first time to operate an out-of-state pharmacy shall not exceed three hundred dollars (\$300).

(ii) The fee for renewal of a permit to operate an out-of-state pharmacy shall not exceed one hundred fifty dollars (\$150) per year.

(iii) When there is a change in ownership in an out-of-state pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(5) The fee for a certificate as a licensed pharmacist shall not exceed ten dollars (\$10.00);

(6) The fee for certifying grades in connection with an application for reciprocity licensure without an examination shall not exceed ten dollars (\$10.00);

(7)(A) The fee for issuance of a hospital pharmaceutical service permit shall not exceed three hundred dollars (\$300), and the fee for the renewal of a hospital pharmaceutical service permit shall not exceed one hundred fifty dollars (\$150) per year.

(B) When there is a change in ownership of a hospital pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150).

(C)(i) The fee for issuance of an ambulatory care center pharmaceutical service permit shall not exceed three hundred dollars (\$300), and the fee for the renewal of an ambulatory care center pharmaceutical service permit shall not exceed one hundred fifty dollars (\$150) per year.

(ii) When there is a change in ownership of an ambulatory care center pharmacy, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(8)(A) The fee for issuance of an institutional pharmaceutical services permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the annual renewal of an institutional pharmaceutical services permit shall not exceed thirty-five dollars (\$35.00);

(9) [Repealed.]

(10)(A) The fee for intern registration shall not exceed forty-five dollars (\$45.00).

(B) The fee for preceptor registration shall not exceed twenty dollars (\$20.00) every two (2) years;

(11) The fee for a change of pharmacist in charge of a pharmacy or other facility as described at § 17-92-403 shall not exceed thirty-five dollars (\$35.00);

(12) The fee for reinstatement of a pharmacist licensure shall not exceed seventy-five dollars (\$75.00) for each delinquent year up to a maximum of three hundred dollars (\$300);

(13) The fee for the Arkansas State Board of Pharmacy law book shall not exceed twenty-five dollars (\$25.00) except to interns on initial licensure and applicants for reciprocity on a one-time basis. A copy of each edition as revised shall be provided free to each pharmacy permit holder;

(14) The fee for a change of location inspection shall not exceed one hundred dollars (\$100);

(15) The penalty for late payment of renewal of any permit, license, registration, or certificate shall not exceed twenty dollars (\$20.00) per month beginning the first day of the second month after expiration, provided that if the renewal is not paid by the first day of the fourth month after expiration, the license shall be void;

(16)(A) The fee for issuance of a wholesale distributor, third-party logistics provider, manufacturer, or outsourcing facility of legend

drugs and controlled substances permit shall not exceed three hundred dollars (\$300), and the renewal fee shall not exceed one hundred fifty dollars (\$150) per year.

(B) When there is a change in ownership of a wholesale distributor, third-party logistics provider, manufacturer, or outsourcing facility of legend drugs and controlled substances, a new permit must be obtained, and the fee shall not exceed one hundred fifty dollars (\$150);

(17)(A) The fee for the original issuance of a pharmacy technician's permit shall not exceed thirty-five dollars (\$35.00).

(B) The fee for the renewal of a pharmacy technician's permit shall not exceed thirty-five dollars (\$35.00) per year.

(C) The board may waive the fees under subdivisions (a)(17)(A) and (B) of this section if the pharmacy technician performs pharmacy technician duties as a volunteer in a charitable clinic;

(18)(A) The reinstatement fee for a pharmacy technician's permit shall not exceed forty dollars (\$40.00).

(B) The board may waive the fee under subdivision (a)(18)(A) of this section if the pharmacy technician performs pharmacy technician duties as a volunteer in a charitable clinic; and

(19)(A) The application fee for a license to sell, rent, offer to sell, or rent directly to patients in this state any home medical equipment, legend drugs, or medical gases shall not exceed two hundred fifty dollars (\$250).

(B) The license renewal fee shall not exceed one hundred twenty-five dollars (\$125).

(C) The change-of-ownership fee shall not exceed one hundred twenty-five dollars (\$125).

(b) All fees for examination for a license shall be payable with the application and shall not be subject to refund.

(c) Should any license, certificate, or registration not be renewed within ninety (90) days after expiration thereof, it may be reinstated by the board as authorized in this section upon payment of the renewal fee and reinstatement fee. However, the following are not subject to reinstatement if not renewed within ninety (90) days after expiration:

- (1) Pharmacy permits;
- (2) Out-of-state pharmacy permits;
- (3) Speciality pharmacy permits;
- (4) Hospital permits;
- (5) Ambulatory care center pharmacy permits;
- (6) Wholesale distributors, third-party logistics providers, manufacturers, or outsourcing facilities of legend drugs or controlled substance permits, or both; and
- (7) Suppliers of medical equipment, legend devices, and medical gas licenses.

(d)(1) All retail pharmacy permits, out-of-state pharmacy permits, specialty pharmacy permits, and pharmacist licenses shall be renewed every two (2) years beginning with renewals for 2002-2003.

(2) All pharmacy technician permits, hospital pharmacy permits, ambulatory care center pharmaceutical services permits, wholesale distributors, third-party logistics providers, manufacturers, or outsourcing facilities of legend or controlled substance permits, wholesale distributors of medical equipment, legend devices, and medical gases permits, institutional pharmaceutical services permits, and any other permit, license, registration, or certificate issued by the board and not covered in subdivision (d)(1) of this section other than internship licenses and preceptor permits shall be renewed every two (2) years.

(3) The fee for any biennial renewal term will be the amount of two (2) annual renewal fees for the applicable license, permit, registration, or certification as provided in subsection (a) of this section.

(4) If the initial licensure, permit, certificate, or registration occurs in the first year of a biennial renewal term, the applicant shall pay the appropriate initial fee and the applicable annual fee for the license, permit, certificate, or registration for the second year in the renewal term as provided in subsection (a) of this section.

(5) If the initial licensure, permit, certificate, or registration occurs in the second year of a biennial renewal term, the applicant will pay only the original fee and will not be responsible for the renewal fee until the biennial renewal period for the license, permit, certificate, or registration.

History. Acts 1965, No. 480, §§ 1, 2; 1975, No. 597, § 1; 1979, No. 751, § 1; 1983, No. 511, § 10; 1985, No. 616, § 3; A.S.A. 1947, §§ 72-1042, 72-1043; Acts 1991, No. 740, § 3; 1997, No. 1029, § 1; 1999, No. 105, § 6; 2001, No. 910, § 2;

2005, No. 388, § 1; 2007, No. 435, § 1; 2009, No. 355, § 2; 2011, No. 597, § 1; 2015, No. 542, §§ 2-4; 2021, No. 63, § 2.

Amendments. The 2021 amendment repealed (a)(9).

17-92-109, 17-92-110. [Repealed.]

Publisher's Notes. These sections, concerning prescriptions for optometrists and the prescriptive authority of advanced practice nurses, were repealed by Acts 2019, No. 309, § 1, effective July 24,

2019. The sections were derived from the following sources:

17-92-109. Acts 1987, No. 101, § 4; 1997, No. 437, § 3.

17-92-110. Acts 1995, No. 409, § 20.

17-92-112. [Repealed.]

Publisher's Notes. This section, concerning prescriptions for physician assistants, was repealed by Acts 2019, No. 309,

§ 2, effective July 24, 2019. The section was derived from Acts 1999, No. 851, § 24.

17-92-115. Requirements for administering and dispensing under statewide protocol.

(a) When initiating therapy and administering or dispensing, or both, under a statewide protocol, a pharmacist shall:

(1) Notify the primary care provider of the patient of any drug or device furnished to the patient or enter the appropriate information in

a patient record system shared with the primary care provider, as permitted by the primary care provider;

(2) Provide the patient with a written record of the drugs or devices furnished and advise the patient to consult a physician of the patient's choice, if the patient does not have a primary care provider; and

(3)(A) Make a standardized fact sheet available to the recipient of the drug or device.

(B) The standardized fact sheet shall include without limitation:

(i) The indications and contraindications for the use of the drug or device;

(ii) The appropriate method for the use of the drug or device;

(iii) The need for medical follow-up; and

(iv) Other appropriate information.

(b)(1) In addition to the requirements under subsection (a) of this section, when initiating therapy and administering or dispensing, or both, oral contraceptives under a statewide protocol, a pharmacist shall:

(A) Complete a training program related to oral contraceptives that has been approved by the Arkansas State Board of Pharmacy;

(B)(i) Screen a patient seeking oral contraceptives to assess whether the patient has been seen by a primary care provider or women's healthcare provider within the previous six (6) months.

(ii) If the patient has not been seen by a primary care provider or women's healthcare provider within the previous six (6) months, the pharmacist shall:

(a) Provide the patient with a referral to a local primary care provider or women's healthcare provider; and

(b) Not dispense more than a six-month supply of oral contraceptives or the equivalent number of refills to the patient until the patient has been seen by a primary care provider or women's healthcare provider.

(iii) A pharmacist shall not provide the patient with a referral to a licensed abortion provider.

(iv) The board shall adopt screening assessment procedures and questionnaires to be used by pharmacists throughout the state;

(C)(i) Explain verbally to the patient the possible effects of an oral contraceptive, including without limitation the death of an unborn child and possible health complications or adverse reactions as printed by the United States Food and Drug Administration.

(ii) The patient and pharmacist shall sign an informed consent form that documents the explanation described in subdivision (b)(1)(C)(i) of this section and place the form in the patient's medical record;

(D) Report the following information to the Department of Health:

(i) The number of women who receive oral contraceptives without a prescription; and

(ii) The age of the women who receive oral contraceptives without a prescription;

(E) Provide a standardized information sheet about the oral contraceptive dispensed to the patient; and

(F) Write a summary of consultation to be maintained in the patient's medical record.

(2) A pharmacist shall only initiate therapy and administer or dispense, or both, oral contraceptives under a statewide protocol to an individual who is eighteen (18) years of age or older.

History. Acts 2017, No. 284, § 4; 2021, No. 408, § 2. added (b) and designated the former section as (a).

Amendments. The 2021 amendment

17-92-117. Prescriptions for all healthcare professionals — Definition.

(a) As used in this section, "healthcare professional" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession.

(b) A pharmacist licensed in the State of Arkansas may fill prescriptions in the State of Arkansas for any healthcare professional who has prescriptive authority to the extent of that healthcare professional's scope of practice.

History. Acts 2019, No. 309, § 3.

17-92-118. Point-of-care treatment. [Effective January 1, 2022.]

A pharmacist who tests for conditions under § 17-92-101(17)(A)(x) shall:

(1) Hold a license to practice pharmacy in this state;

(2) Report a diagnosis or suspected existence of influenza to the Department of Health;

(3) Furnish patient records to a healthcare practitioner designated by the patient upon the request of the patient; and

(4) Maintain records of all patients receiving services under this section for two (2) years.

History. Acts 2021, No. 503, § 4.

A.C.R.C. Notes. Acts 2021, No. 503, § 1, provided: "Purpose. It is the purpose of this act to authorize pharmacists in Arkansas to test and screen for health conditions that the Centers for Medicare and Medicaid Services has determined qualify for a waiver under the federal Clinical Laboratory Improvement Amend-

ments of 1988, the federal regulations adopted, or any established screening procedures that can safely be performed by a pharmacist."

Effective Dates. Acts 2021, No. 503, § 6: Effective date clause provided: "Sections 1-4 take effect on and after January 1, 2022."

17-92-119. Prescription delivery standards — Definition.

(a) As used in this section, "home delivery services" means providing medications from a pharmacy licensed in this state to a patient through

any means other than the patient picking up the medication at the physical pharmacy location, including shipping, mailing, or delivering in any manner a dispensed legend drug.

(b)(1) The Arkansas State Board of Pharmacy shall promulgate and maintain rules defining the standard of care for pharmacies and pharmacists that provide home delivery services in this state.

(2) If a pharmacy or pharmacist owns or controls, is owned or controlled by, or is under ownership or control with an insurance company, pharmacy benefits manager, pharmaceutical manufacturer, pharmaceutical wholesaler, or pharmacy benefits manager affiliate, then the pharmacy, including any common ownership or controlling entities, or pharmacist, shall not require that a patient receive his or her prescriptions through home delivery services.

(c) A pharmacy or pharmacist is not prohibited from charging a nominal fee for any home delivery service if the nominal fee is charged to the patient with his or her express consent.

(d) The board may modify delivery standards to accommodate changes in technology and for other reasons.

History. Acts 2021, No. 922, § 1.

17-92-120. New prescription requests and new refill requests from prescriber.

(a) A pharmacy, pharmacist, employee of a pharmacy, or entity that owns or controls, is owned or controlled by, or is under ownership or control with an insurance company, health clinic, rural health center, federally qualified health center, pharmacy benefits manager, pharmaceutical manufacturer, pharmaceutical wholesaler, or pharmacy benefits manager affiliate shall not request or solicit:

(1) Refill requests for prescription medications from a prescriber for a patient who has not previously filled prescriptions with the pharmacy without express written consent for each individual prescription requested; or

(2) New prescription medications from a prescriber for a patient who has not previously filled prescriptions with the pharmacy without express written consent for each individual prescription requested.

(b)(1) When a physician or other licensed prescriber authorizes or provides new prescriptions or refill medications to a pharmacy that is not physically located in this state or to a pharmacy that utilizes common carriers to deliver medications through the mail for a new patient who has not previously received pharmacist services or prescriptions filled through that pharmacy, that pharmacy shall:

(A) Establish a professional relationship between a pharmacist and the patient by telephone or telemedicine consult;

(B) Obtain express consent to provide pharmacist services before any prescription medication's being processed, filled, mailed, or delivered to a patient; and

(C) Include communication to the patient about:

- (i) The address and physical city and state of the pharmacy;
- (ii) The name of the licensed pharmacist who will be providing services;
- (iii) The telephone number and website for the pharmacy;
- (iv) Expectations for time of delivery of prescription medications; and
- (v) Disclosure of any conflicts of interest, including common ownership of the pharmacy by a healthcare insurer, pharmacy benefits manager, medical clinic, federal qualified health center, rural health center, hospital, pharmaceutical wholesaler, or pharmaceutical manufacturer.

(2) If the conditions within subdivision (b)(1) of this section are not met, then the pharmacy and pharmacist shall not fill, bill, dispense, or mail any prescription medications to the patient.

(c) This section does not prohibit:

(1) A physician licensed in this state or any other prescriber licensed in this state from issuing new prescriptions or prescription refills to any licensed pharmacy in this state or out of state that a patient wishes to use; or

(2) A pharmacy licensed in this state or out of this state from requesting prescription transfers from another licensed pharmacy as directed by a patient.

History. Acts 2021, No. 1053, § 1.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF PHARMACY

SECTION.

17-92-201. Members — Qualifications.

17-92-205. Rules — Enforcement.

17-92-206. Issuance of bulletins — Annual report.

SECTION.

17-92-207. [Repealed.]

17-92-208. Authorization for payment to the Department of Health.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-92-201. Members — Qualifications.

(a) The Arkansas State Board of Pharmacy shall consist of eight (8) members, appointed by the Governor for terms of six (6) years:

(1) Five (5) members shall be experienced pharmacists who have been actively engaged in the practice of pharmacy for the last five (5) years immediately preceding their appointments, to be appointed by the Governor after consulting the Arkansas Pharmacists Association and subject to confirmation by the Senate;

(2) One (1) member shall be a minority who is a licensed practicing pharmacist in this state, to be appointed by the Governor after consulting the Pharmaceutical Section of the Arkansas Medical, Dental, and Pharmaceutical Association, Inc. and subject to confirmation by the Senate; and

(3)(A) Two (2) members of the board shall not be actively engaged in or retired from the practice of pharmacy. One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large, subject to confirmation by the Senate. Both shall be full voting members but shall not participate in the grading of examinations.

(B) The two (2) positions shall not be held by the same person.

(b) A member shall hold his or her office until his or her successor shall have been appointed and qualified.

(c)(1) In case of a vacancy from death or other cause, the Governor shall appoint a successor with qualifications as set forth in subsection (a) of this section.

(2) If a vacancy exists in the minority position due to death, resignation, or other cause, a successor member to the position shall be appointed by the Governor for the remainder of the unexpired portion of the term in the same manner as is provided for the initial appointment.

(d) [Repealed.]

History. Acts 1891, No. 50, § 2, p. 80; C. & M. Dig., § 3668; Pope's Dig., § 4604; Acts 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-1002; Acts 1991,

No. 1163, § 1; 1997, No. 942, § 1; 1999, No. 105, § 7; 2011, No. 839, § 1; 2015, No. 1100, § 35; 2019, No. 173, § 1.

Amendments. The 2019 amendment repealed (d).

17-92-205. Rules — Enforcement.

(a)(1) The Arkansas State Board of Pharmacy shall have authority to make reasonable rules, not inconsistent with law, to carry out the purposes and intentions of this chapter and the pharmacy laws of this state that the board deems necessary to preserve and protect the public health.

(2) The board shall by rule establish standards for the administration of medications by licensed pharmacists, including, but not limited to, the completion of a course in the administration of medications.

(b) It shall be the duty of the board, through officials appointed by the Department of Health for that purpose, to enforce all the provisions of this chapter.

(c)(1) Upon written authorization by the board, the department's inspectors or other designated agents shall have authority to conduct oversight activities authorized by law, including, but not limited to, audits, investigations, inspections, licensure, or disciplinary actions, civil, administrative, or criminal proceedings or actions, or other activities necessary for appropriate oversight of the regulated activities and may enter any store, business establishment, including any hospital pharmacy, or any other facility holding a license, permit, or other authority issued by the board where drugs, medicines, chemicals, pharmaceuticals, poisons, home medical equipment, or services or other objects, services, or activities regulated by the board are manufactured, sold, dispensed, or conducted to enforce this chapter, the Uniform Controlled Substances Act, § 5-64-101 et seq., § 5-64-1001 et seq., § 5-64-1101 et seq., the Food, Drug, and Cosmetic Act, § 20-56-201 et seq., or § 20-64-501 et seq.

(2)(A) Upon written authorization by the board, the department's inspectors and other designated agents may obtain copies of any document, prescription, drug order, or other record or physical object relevant to the board's oversight of the regulated activity.

(B)(i) With regard to hospital pharmacies, the department's inspectors and other designated agents may also view and at the department's expense make copies of identifiable records relating to patients in patient areas of the hospital if the records are relevant to an activity regulated by the board.

(ii) However, should any such record be in active use or storage at the time of the board's request to examine, obtain, or copy the record, the entity having control or possession of the record shall state in writing that the record will be made available to the board at a specific date and time within two (2) working days after the board's request.

(C) For purposes of confidentiality, a record containing patient health information in the possession of the board under this subdivision (c)(2) shall be considered a medical record for purposes of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(3) In any investigation or official inquiry of a potential violation of law or any administrative proceeding regarding an alleged violation of law subject to its jurisdiction, the board may issue subpoenas signed by the Executive Director of the Arkansas State Board of Pharmacy or the executive director's designee for any document, prescription, drug order, or other record or physical object identified or otherwise described in the subpoena if the item is relevant and material to the inquiry, investigation, or proceeding.

(4) In any administrative proceeding arising from an alleged violation of law within its jurisdiction, the board may order the disclosure of any information that is relevant and material to the alleged violation.

(5)(A) If a person has been served with a subpoena or subpoena duces tecum or has been ordered to disclose information in an administrative proceeding under this chapter and fails to comply with the order, the board may apply to the Pulaski County Circuit Court or to the circuit court of the county in which the board is conducting its investigation or hearing for an order directing that:

(i) The person be brought before the court; and

(ii) After notice and opportunity for a hearing, the person comply with the order.

(B) If the person violates the court's order, the court may punish the person for civil contempt.

(C) If a person fails or refuses to make available to the board's inspectors or agents under subdivision (c)(2) of this section any document, prescription, drug order, or other record or physical object, the board may file an action in the Pulaski County Circuit Court or in the circuit court of the county in which the board is conducting its oversight activity to obtain an order, after notice and opportunity for hearing, mandating that the person make the document, prescription, drug order, or other record or physical object available to the board's representatives.

(6) The department's inspectors and other designated agents may seize products for testing of sterility, potency, and pyrogenicity when inspecting permitted facilities.

(d) The board shall promulgate rules limiting the amount of Schedule II narcotics that may be dispensed by licensees of the board.

History. Acts 1929, No. 72, § 14; Pope's Dig., § 4635; Acts 1955, No. 57, § 19; A.S.A. 1947, §§ 72-1004.1, 72-1033; Acts 1991, No. 740, § 5; 1997, No. 1204, § 3; 1999, No. 644, § 1; 2003, No. 1092, § 2; 2005, No. 388, § 2; 2005, No. 1962, § 75; 2017, No. 477, § 1; 2017, No. 820, § 11; 2019, No. 315, § 1571; 2019, No. 910, §§ 4885-4889.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" fol-

lowing "rules" in (a)(1); and substituted "rule" for "regulation" in (a)(2).

The 2019 amendment by No. 910 substituted "appointed by the Department of Health" for "appointed by it or under its supervision" in (b); in (c), substituted "Department of Health's" for "board's" in (1), (2)(A), (2)(B)(i) and (6), and substituted "department's expense" for "board's expense" in (2)(B)(i).

17-92-206. Issuance of bulletins — Annual report.

(a) It shall be the duty of the Arkansas State Board of Pharmacy to issue bulletins from time to time, informing pharmacists of important United States public health regulations, service and regulatory announcements of the Natural Resources Conservation Service in the United States Department of Agriculture, and decisions of the United States Department of the Treasury relating to the possession, use, and sale of nonbeverage United States Pharmacopoeia alcohol and to the Harrison-Wright Antinarcotic Act.

(b) The board shall make a written report on September 1 of each year to the Secretary of the Department of Health and to the Arkansas Pharmacist's Association of all its proceedings, orders, rules, and requirements, of its receipts and disbursements, including also the names of all persons licensed to practice under this chapter, and a record of permits and renewals.

History. Acts 1921, No. 535, § 4; 1929, No. 72, § 14; Pope's Dig., §§ 4622, 4635; A.S.A. 1947, §§ 72-1011, 72-1033; Acts 1991, No. 740, § 6; 2009, No. 355, § 3; 2019, No. 315, § 1572; 2019, No. 910, § 4890.

Amendments. The 2019 amendment

by No. 315 substituted "and requirements" for "requirements and regulations" in (b).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Governor" in (b).

17-92-207. [Repealed.]

Publisher's Notes. This section, concerning maintenance of office, was repealed by Acts 2019, No. 910, § 4891,

effective July 1, 2019. The section was derived from Acts 1955, No. 57, § 18; A.S.A. 1947, § 72-1005.1.

17-92-208. Authorization for payment to the Department of Health.

(a) The Arkansas State Board of Pharmacy may make payment to the Department of Health for services, salaries, and other purposes from the funds received by the board from issuance of licensed pharmacy permits, renewals, or certificates of licensure of licensed pharmacists, examinations, reciprocity fees, and from other moneys collected.

(b)(1) The department may employ an attorney to supervise and conduct its investigations and to institute and prosecute actions and charges for the violation of the provisions of the Hospital Pharmacies Act, § 17-92-601 et seq.

(2) The attorney employed or retained by the department may make regular reports to the Attorney General of the actions instituted or prosecuted by him or her.

(3) Appeals from the circuit court to the Supreme Court in matters affecting the action of the board may be handled by the office of the Attorney General.

(c) The board may make reimbursement of the necessary and reasonable travel, board, and lodging expenses of the staff of the board incurred in the performance of their duties.

History. Acts 1957, No. 230, §§ 1-3; 1965 (1st Ex. Sess.), No. 26, § 1; 1967, No. 191, § 1; 1977, No. 55, § 4; 1983, No. 511, § 3; A.S.A. 1947, §§ 72-1002.1, 72-1002.2; 2015, No. 710, § 6; 2019, No. 910, § 4892.

Amendments. The 2019 amendment rewrote the section heading, which for-

merly read: "Authority"; substituted "may make payment for the Department of Health for services" for "is authorized to make payment for services" in (a); in (b), substituted "The department may" for "The board is authorized to" in (1), and substituted "department may make" for

"board may make" in (2); and substituted "The board may" for "The board is authorized to" in (c).

SUBCHAPTER 3 — LICENSED PHARMACISTS

SECTION.

- 17-92-301. License required.
 17-92-302. Unlicensed practice — Penalty.
 17-92-305. Application — Qualification of applicants.
 17-92-308. Reciprocity.
 17-92-309. Registration and certificate.

SECTION.

- 17-92-310. Failure to renew.
 17-92-311. Revocation, suspension, or nonrenewal — Grounds.
 17-92-316. Credential required for professional pharmacy service.
 17-92-317. Criminal background check.

17-92-301. License required.

(a) No person shall perform any of the acts constituting the practice of pharmacy unless the person is:

- (1) A licensed pharmacist;
- (2) A student or graduate of a recognized college of pharmacy serving an internship under an internship program established and regulated by the Arkansas State Board of Pharmacy;
- (3) A pharmacy technician performing the limited functions permitted under this chapter and rules promulgated hereunder; or
- (4) A hospital pharmacy technician as defined in § 17-92-602 performing the limited functions permitted under that subchapter and rules promulgated thereunder.

(b) No person other than a licensed pharmacist shall use the term "doctor of pharmacy" or "Pharm.D".

History. Acts 1971, No. 26, § 2; 1983, No. 511, § 14; A.S.A. 1947, § 72-1045; Acts 1991, No. 740, § 7; 1993, No. 769, § 4; 1999, No. 105, § 12; 2019, No. 315, § 1573.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(3) and (a)(4).

17-92-302. Unlicensed practice — Penalty.

(a) No person shall fill a prescription, compound medicines, or otherwise perform the function of a licensed pharmacist unless the person is:

- (1) An Arkansas-licensed pharmacist, except students or graduates of a recognized college of pharmacy serving internship as provided by law and regulated by the Arkansas State Board of Pharmacy;
- (2) A pharmacy technician performing the limited functions permitted under this chapter and rules promulgated hereunder; or
- (3) A hospital pharmacy technician as defined in § 17-92-602 performing the limited functions permitted under that subchapter and rules promulgated thereunder.

(b) Any person who is not an Arkansas-licensed pharmacist or a student serving internship or a pharmacy technician performing the

limited functions permitted under this chapter and rules promulgated hereunder or a hospital pharmacy technician as defined in § 17-92-602 performing the limited functions permitted under that subchapter and rules promulgated thereunder, who shall fill a prescription, compound or dispense medicine, or otherwise perform the functions of a pharmacist, shall be guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) for the first offense and not less than one hundred dollars (\$100) or thirty (30) days' imprisonment, or both fine and imprisonment, for each succeeding offense thereafter.

(c) Each day that the person shall fill prescriptions, compound or dispense medicines, or otherwise perform the functions of a pharmacist shall constitute a separate offense.

(d) Any licensed pharmacist who shall aid, abet, or encourage any person to violate the provisions of this section shall have his or her license or permit revoked or suspended, within the discretion of the board.

History. Acts 1955, No. 57, § 12; A.S.A. 1947, § 72-1011.8; Acts 1991, No. 740, § 8; 1999, No. 105, §§ 13, 14; 2019, No. 315, §§ 1574, 1575.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(2), (a)(3), and twice in (b).

17-92-305. Application — Qualification of applicants.

(a) Each applicant for examination as a pharmacist shall:

(1) Be not less than twenty-one (21) years of age; and

(2) Have:

(A) Graduated and received the first professional undergraduate degree from a pharmacy degree program which has been approved by the Arkansas State Board of Pharmacy; or

(B) Graduated from a foreign college of pharmacy, completed a transcript verification program, taken and passed a college of pharmacy equivalency exam program, and completed a process of communication ability testing as defined under board rules so that it is assured that the applicant meets standards necessary to protect public health and safety.

(b) Each application for examination shall be made on a form to be supplied by the board and shall be filed with the board as required by board rules.

(c) Each application shall be accompanied by the cost of the examination plus the examination fee and certificate fee prescribed by § 17-92-108.

(d) The examination shall be given at a time and place and in a manner set by the board.

History. Acts 1891, No. 50, § 8, p. 80; C. & M. Dig., § 3674; Pope's Dig., § 4610; Acts 1955, No. 57, § 1; 1983, No. 511, § 5; A.S.A. 1947, §§ 72-1007.1, 72-1008; Acts

1991, No. 740, § 9; 1997, No. 1029, § 2; 2019, No. 315, §§ 1576, 1577; 2019, No. 990, § 89.

Amendments. The 2019 amendment

by No. 315 substituted “rules” for “regulations” in (a)(3)(B) and (b).

The 2019 amendment by No. 990 added “shall” in (a); deleted former (a)(2) and

redesignated (a)(3) as (a)(2); and made stylistic changes.

17-92-308. Reciprocity.

(a) The Arkansas State Board of Pharmacy, in its discretion, may license as a pharmacist, through the process of reciprocity as established by the National Association of Boards of Pharmacy, any person who is duly licensed in some other state, territory, or the District of Columbia if the territory, state, or the District of Columbia has the same general requirements for licensure as Arkansas at the time of original licensure, provided that the state, territory, or the District of Columbia in which the person is licensed shall, under like conditions, grant reciprocal licensure to a pharmacist duly licensed by examination in this state.

(b) All applications for a reciprocal license shall be accompanied by the fee prescribed by § 17-92-108.

(c)(1) In the interim between sessions of the board and upon satisfactory evidence of the fitness as established by board rule of an applicant for reciprocity, any member of the board, in his or her discretion, may issue a temporary certificate that shall authorize the holder to practice pharmacy as defined in § 17-92-101.

(2) The temporary certificate shall expire on the date of the next meeting of the board after the granting of the certificate whether that meeting is a regular meeting or a called meeting at which reciprocity is considered.

History. Acts 1955, No. 57, § 3; 1965, No. 480, § 1; 1975, No. 597, § 1; 1979, No. 751, § 1; 1985, No. 616, § 3; A.S.A. 1947, §§ 72-1007.3, 72-1042; Acts 1997, No. 1029, § 3; 2001, No. 801, § 2; 2019, No. 315, § 1578.

Amendments. The 2019 amendment substituted “rule” for “regulation” in (c)(1).

17-92-309. Registration and certificate.

(a) The Arkansas State Board of Pharmacy shall register in a suitable book the names and places of residence of all persons to whom it issues certificates and the date of issuance.

(b) The board shall issue an appropriate certificate to each person licensed. The certificate must be conspicuously displayed in every store described in this chapter.

(c) The board may provide by rule for issuing and waiving the renewal fee for pharmacy certificates denoting special recognition for pharmacists who have the following qualifications:

(1) The pharmacist graduated from a college of pharmacy approved by the board fifty (50) or more years before the date on which the certificate will be issued; or

(2)(A) The pharmacist has held an Arkansas pharmacist license for forty-nine (49) continuous years before the date on which the certificate will be issued without any lapse in the payment of licensure fees.

(B) However, a pharmacist who has paid fees to reinstate an expired license shall not be deemed to have held a license for continuous years.

History. Acts 1891, No. 50, §§ 6, 7, p. 80; C. & M. Dig., §§ 3672, 3673; Pope's Dig., § 4609; A.S.A. 1947, §§ 72-1007, 72-1009; Acts 2003, No. 1092, § 1; 2019, No. 315, § 1579.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (c).

17-92-310. Failure to renew.

(a)(1)(A) All retail pharmacy permits, out-of-state pharmacy permits, specialty pharmacy permits, and pharmacist licenses shall expire on December 31 of the first odd-numbered year following the date of issuance.

(B) All preceptor permits shall expire on December 31 of the first odd-numbered year following the date of issuance.

(C)(i)(a) Intern licenses issued to foreign graduates shall expire on December 31 of the second calendar year following the date of issuance.

(b) However, an intern license issued to a foreign graduate shall expire when the intern is issued a pharmacist license.

(ii)(a) An intern license issued to a student intern shall remain valid as long as the intern maintains active student status in a college of pharmacy approved by the Arkansas State Board of Pharmacy and for six (6) months following graduation.

(b) An intern license issued to a student intern shall expire six (6) months following graduation.

(c) An intern license issued to a student intern may be reinstated if the intern resumes active student status in a board-approved college of pharmacy and applies for reinstatement.

(d) An intern license issued to a student intern shall expire when the intern is issued a pharmacist license.

(D) All pharmacy technician permits, hospital pharmacy permits, ambulatory care center pharmaceutical services permits, wholesale distributors, third-party logistics providers, manufacturers, or outsourcing facilities of legend or controlled substance permits, wholesale distributors of medical equipment, legend devices, and medical gases permits, institutional pharmaceutical services permits, List I chemical permits, and any other permit, license, registration, or certificate issued by the board and not covered in subdivisions (a)(1)(A)-(C) of this section shall expire on December 31 of the first even-numbered year following the date of the issuance of the permit, license, registration, or certificate.

(a)(1)(A)-(C) of this section shall expire on December 31 of the first even-numbered year following the date of the issuance of the permit, license, registration, or certificate.

(2) Every license, permit, registration, and certificate not renewed within ninety (90) days after expiration thereof shall be void.

(b) The penalty for late payment of renewal for pharmacists, pharmacies, wholesaler/manufacturer of legend drugs and controlled substances, hospital, and institutional permits shall be as listed in § 17-92-108, and if renewal remains unpaid by April 1 of the year, the license shall be void.

(c) If a pharmacist's license is not renewed by April 1, the fee for reinstatement shall be as stated in § 17-92-108.

(d) If a pharmacist's license has not been renewed for more than two (2) years, the board shall evaluate the former pharmacist to determine his or her continued ability to practice pharmacy safely with regard to the public health and safety, and the board shall establish conditions for the safe reentry into practice of the profession.

History. Acts 1955, No. 57, § 4; 1965, No. 480, § 1; 1975, No. 597, § 1; 1979, No. 751, § 1; 1985, No. 616, § 3; A.S.A. 1947, §§ 72-1010.1, 72-1042; Acts 1991, No. 740, § 11; 1997, No. 1029, § 4; 2005, No. 388, § 3; 2011, No. 597, § 2; 2015, No. 542, § 5; 2021, No. 63, §§ 3, 4.

deleted "nursing home consultant pharmacist permits" preceding "and pharmacist licenses" in (a)(1)(A); and, in (b), substituted "and institutional permits" for "institutional, and nursing home consultant permits" and "by April 1 of the year" for "on April 1 of any year".

Amendments. The 2021 amendment

17-92-311. Revocation, suspension, or nonrenewal — Grounds.

(a) The Arkansas State Board of Pharmacy may revoke or suspend an existing certificate of licensure, license, registration, or permit or may refuse to issue a certificate of licensure, license, registration, or permit if the holder or applicant, as the case may be, has committed or is found guilty by the board of any of the following acts or offenses set forth:

(1) The person is guilty of fraud, deceit, or misrepresentation in the practice of pharmacy;

(2) The person is unfit or incompetent to practice pharmacy by reason of negligent performance of his or her duties;

(3) The person has been found guilty or pleaded guilty or nolo contendere in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld by a court of this state, another state, or the United States Government for:

(A) Any felony listed under § 17-3-102;

(B) Any act involving gross immorality or which is related to the qualifications, functions, and duties of a licensee; or

(C) Any violation of the pharmacy or drug laws or rules of this state, or of the pharmacy or drug statutes, rules, and regulations of any other state or of the United States Government;

(4) The person has become physically or mentally incompetent to practice pharmacy to such an extent as to endanger the public;

(5) The person has directly or indirectly aided or abetted the practice of pharmacy by a person not authorized to practice pharmacy by the board;

(6) The person has been guilty of fraud or misrepresentation in obtaining a license to practice pharmacy in the State of Arkansas as a licensed pharmacist;

(7) The person has been guilty of unprofessional or dishonorable conduct;

(8) The person has willfully violated any of the provisions of the pharmacy laws of the State of Arkansas;

(9) The person is addicted to the use of intoxicating liquors or drugs to such a degree as to render him or her unfit, in the opinion of the board, to manufacture, compound, sell, or dispense drugs or medicine;

(10) The person knowingly adulterated or caused to be adulterated any drugs, chemical, or medical preparations and offered those preparations for sale; or

(11) The person had his or her certificate of licensure, license, registration, or permit revoked, suspended, or had other disciplinary action taken, or had his or her application for a certificate of licensure, license, registration, or permit refused, revoked, or suspended, or had voluntarily or otherwise surrendered his or her certificate of licensure, license, registration, or permit after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state.

(b) Nothing in this section should be construed as affecting the rights of any person to appeal any order of the board as now provided by the state pharmacy laws.

History. Acts 1963, No. 245, §§ 1, 2; added "listed under § 17-3-102" in A.S.A. 1947, §§ 72-1040, 72-1041; Acts 1991, No. 740, § 12; 2011, No. 597, § 3; 2017, No. 477, § 2; 2019, No. 990, § 90. (a)(3)(A); deleted "moral turpitude" following "involving" in (a)(3)(B); and made stylistic changes.

Amendments. The 2019 amendment

17-92-316. Credential required for professional pharmacy service.

(a)(1) The Arkansas State Board of Pharmacy may provide by rule for credentialing and approval of pharmacists to practice pharmacy services determined by the board to require a credential.

(2)(A) The credentials may be issued by agencies approved by the board to pharmacists who qualify as a result of meeting the minimum competencies, standards, objectives, and qualifications determined by the board.

(B) However, a credential shall not authorize the pharmacist to practice credentialed pharmacy services in Arkansas until after the board has determined that the credentialed pharmacist meets the minimum competencies, standards, objectives, and qualifications determined by the board.

(b) The board shall adopt rules necessary and appropriate to implement the credentialing and the board's approval of pharmacists to practice credentialed pharmacy services, including:

(1) Identification of areas of credentialed pharmacy services;

(2) Identification of the minimum competencies, standards, objectives, and qualifications necessary for a credential and the board's approval to practice in each area of credentialed pharmacy service;

(3) Identification of the standards for qualifying an agency to issue credentials for areas of pharmacy services;

(4) The procedure and standards, which may include a practical examination, for the board's review and approval of a credential and determination of a pharmacist's qualifications to practice credentialed pharmacy services;

(5) The conversion of a credential previously issued by the board for the practice of pharmacy services to a credential issued by an approved credentialing agency; and

(6) Continuing professional education and other measures to maintain pharmacists' continuing competency in credentialed pharmacy services.

(c) The board shall promulgate rules to:

(1) Identify areas of credentialing;

(2) Establish procedures for initial application and renewal;

(3) Define the minimum competencies and standards to be examined;

(4) Define the qualifications for credentialing; and

(5) Define required continuing education, competencies, standards, and other information necessary to implement this chapter.

History. Acts 1999, No. 105, § 11; 2001, No. 801, § 3; 2019, No. 315, §§ 1580, 1581; 2021, No. 63, § 5.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a)(1) and "rules" for "regulations" in the introductory language of (b) and (c).

The 2021 amendment deleted "disease state management and any other" preceding "pharmacy services" in (a)(1); substituted "as a result of meeting the minimum competencies" for "pursuant to minimum

competencies" in (a)(2)(A); substituted "pharmacy services" for "pharmacy service" in (a)(2)(B), (b)(4), and (b)(5); deleted "disease state management and other" preceding "credentialed pharmacy services" in the introductory language of (b) and in (b)(6); deleted "disease state management or other" preceding "credentialed pharmacy services" in (b)(4); and deleted "disease state management or other" preceding "pharmacy services" in (b)(5).

17-92-317. Criminal background check.

(a)(1) Each applicant for a new intern or pharmacist license or a new or reinstated registration as a pharmacy technician issued by the Arkansas State Board of Pharmacy shall apply to the Identification Bureau of the Division of Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation.

(2) However, the board may authorize the criminal background check obtained for a license or registration to be used for a subsequent application for another new license or registration issued by the board for a designated time period after the date of the original license or registration.

(b) The criminal background check shall conform to the applicable federal standards as in effect on January 1, 2003, and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Division of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the board all information obtained concerning the commission by the applicant of any offense listed in subsection (e) of this section.

(e) Notwithstanding the provisions of § 17-1-103, a person is not eligible to receive or hold an intern or pharmacist license or pharmacy technician registration issued by the board if that person has pleaded guilty or nolo contendere to, or has been found guilty of, any of the following offenses, regardless of whether an adjudication of guilt or sentencing or imposition of sentence is withheld, by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

(1) Any felony listed under § 17-3-102;

(2) Any act involving gross immorality, dishonesty, or which is related to the qualifications, functions, and duties of a person holding the license or registration; or

(3) Any violation of Arkansas pharmacy or drug law or rules, including, but not limited to, this chapter, the Uniform Controlled Substances Act, § 5-64-101 et seq., and the Food, Drug, and Cosmetic Act, § 20-56-201 et seq.

(f)(1)(A) The board may issue a nonrenewable provisional license or registration pending the results of the criminal background check.

(B) The nonrenewable provisional license or registration shall be valid for no more than six (6) months.

(2) Upon receipt of information from the Identification Bureau of the Division of Arkansas State Police that the person holding the nonrenewable provisional license or registration has pleaded guilty or nolo contendere to, or has been found guilty of, any offense under subsection (e) of this section, the board shall immediately revoke the nonrenewable provisional license or registration.

(g)(1) The provisions of subsection (e) of this section and subdivision (f)(2) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure or registration; or

(B) The person holding a license or registration subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

- (F) Character references; and
- (G) Other evidence demonstrating that the applicant does not pose a threat to the public health, safety, or welfare.
- (h)(1) Any information received by the board from the Identification Bureau of the Division of Arkansas State Police under this section shall not be available for examination except by:
 - (A) The affected applicant or the applicant’s authorized representative; or
 - (B) The person whose license or registration is subject to revocation or his or her authorized representative.
- (2) No record, file, or document shall be removed from the custody of the division.
 - (i) Only information pertaining to the person making the request may be made available to the affected applicant or the person whose license or registration is subject to revocation.
 - (j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the criminal background check.
 - (k) The board shall adopt the necessary rules to fully implement the provisions of this section.

History. Acts 2003, No. 1092, § 3; 2015, No. 532, § 1; 2019, No. 315, §§ 1582, 1583; 2019, No. 990, § 91.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (e)(3); and deleted “and regulations” following “rules” in (k).

The 2019 amendment by No. 990 substituted “a person is not eligible” for “no person shall be eligible” in the introductory language of (e); added “listed under § 17-3-102” in (e)(1); and, in (e)(2), deleted “moral turpitude” following “involving” and made a stylistic change.

SUBCHAPTER 4 — PHARMACIES

SECTION.	SECTION.
17-92-401. Applicability to out-of-state operations.	17-92-412. Nursing home consultant pharmacist.
17-92-403. Licensed pharmacist required — Exceptions.	17-92-413. Disclosure of ownership interest or possible conflicts of interest required — Prohibition on data mining.
17-92-407. Revocation — Grounds.	
17-92-409. Pharmacy library required.	

17-92-401. Applicability to out-of-state operations.

- (a) A pharmacy operating outside the state that routinely ships, mails, or delivers in any manner a dispensed legend drug into Arkansas or otherwise practices pharmacy in Arkansas shall hold a pharmacy license issued by the Arkansas State Board of Pharmacy, and that part of the pharmacy operation dispensing the prescription for an Arkansas resident shall abide by Arkansas law and rules of the board.
- (b)(1) Any pharmacy operating outside the state that routinely ships, mails, or delivers in any manner a dispensed legend drug into Arkansas shall be required to have on staff in the out-of-state pharmacy an

Arkansas-licensed pharmacist, who shall be designated the pharmacist-in-charge for the Arkansas out-of-state pharmacy license.

(2) If the out-of-state pharmacy fails to have on staff an Arkansas-licensed pharmacist due to extended illness, death, resignation, or for any other reason, the pharmacy within ten (10) calendar days shall notify the board of the fact and must within thirty (30) calendar days or such additional time at the discretion of the board not to exceed thirty (30) calendar days, either:

(A) Secure the services of an Arkansas-licensed pharmacist; or

(B) Cease to operate as a pharmacy in the State of Arkansas.

(c) An out-of-state pharmacy that ships, mails, or delivers in any manner a dispensed legend drug into Arkansas shall designate an agent who is a resident of Arkansas for service of process and register the agent with the Secretary of State.

(d) If under investigation for violation of this chapter, an out-of-state pharmacy shall be required to appear before the board to respond to questions concerning the investigation.

(e) The board shall have all the powers to enforce this chapter as are granted to the board under § 17-92-101 et seq.

History. Acts 1983, No. 511, § 8; A.S.A. 1947, § 72-1062; Acts 1999, No. 1486, § 1; 2009, No. 355, § 5; 2019, No. 315, § 1584.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a).

17-92-403. Licensed pharmacist required — Exceptions.

(a) No person shall operate a pharmacy or other facility dispensing prescriptions as identified in this section or be issued a pharmacy permit or other permit issued by the Arkansas State Board of Pharmacy to facilities dispensing prescriptions unless an Arkansas-licensed pharmacist-in-charge is on duty in the drugstore or pharmacy a minimum of forty (40) hours per week or as otherwise provided in this chapter or by board rule.

(b) In the absence of a licensed pharmacist, no one shall fill a prescription except a student serving as a graduate intern.

(c) If the owner of any pharmacy or other facility dispensing prescriptions as identified in this section fails to have on duty a licensed pharmacist-in-charge forty (40) hours per week or as otherwise provided in this chapter due to illness, death, resignation, or for any other reason, the owner shall within five (5) days notify the board of the fact and shall within thirty (30) days or such additional time at the discretion of the board either secure the services of a licensed pharmacist-in-charge or remove all prescription legend drugs and drug signs from the pharmacy or facility as identified in this section and cease to operate as a pharmacy or facility as identified in this section.

(d)(1) The board shall provide by rule for the issuance of permits for specialty pharmacies to which § 17-92-607 shall apply.

(2) The owners of specialty pharmacies shall have on duty a licensed pharmacist-in-charge whose minimum number of hours on duty shall

be determined by board rules regarding the nature of the pharmacy service provided.

(3) Specialty pharmacies dispensing prescriptions to in-house patients that are cared for on a twenty-four-hour-per-day basis must have a pharmacist on duty no less than forty (40) hours per week.

(4) The owners of specialty pharmacies shall abide by all provisions established for the employment of pharmacists in this chapter and board rules.

(5) If the owner of any specialty pharmacy fails to have on duty a licensed pharmacist-in-charge as provided in subdivision (d)(2) or subdivision (d)(3) of this section due to illness, death, resignation, or for any other reason, the owner shall within five (5) days notify the board of the fact and shall within thirty (30) days, or such additional time as the board in its discretion may allow, either secure the services of a licensed pharmacist-in-charge or remove all prescription legend drugs and drug signs from the pharmacy and cease to operate the pharmacy.

(e) The board may provide by rule for the issuance of hospital pharmaceutical permits to pharmacists employed in hospitals under which the pharmacist-in-charge employed in a hospital may have a flexible schedule of attendance and to which the requirement of a licensed pharmacist-in-charge on duty for a minimum of forty (40) hours a week shall not apply.

(f) The board shall provide for the issuance of ambulatory care center pharmaceutical services permits to entities so licensed by the Department of Health and that shall employ a licensed pharmacist-in-charge as provided by board rule.

(g) The board shall provide by rule for the issuance of institutional pharmacy permits to governmentally funded institutions that provide inpatient pharmaceutical services to persons confined to such institutions or in which drugs are administered to inpatients on orders of practitioners authorized by law to prescribe or administer the drugs and to which the requirement that the licensed pharmacist-in-charge on duty for a minimum of forty (40) hours a week shall not apply.

(h) The board may provide by rule for the issuance of charitable clinic pharmacy permits to clinics operated on a nonprofit basis to furnish medical and dental care to poor and underprivileged persons and in which drugs are dispensed or administered to such persons on orders or prescriptions of practitioners authorized by law to prescribe or administer the drugs and to which the requirement of a licensed pharmacist-in-charge on duty for a minimum of forty (40) hours a week shall not apply.

History. Acts 1955, No. 57, § 14; 1971, No. 73, § 1; 1975, No. 533, § 1; A.S.A. 1947, § 72-1017.1; Acts 2001, No. 910, § 4; 2017, No. 477, §§ 5, 6; 2019, No. 315, §§ 1585-1588.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a) and made similar changes in (d)(1), (d)(2), (d)(4), (e), (f), (g), and (h).

17-92-407. Revocation — Grounds.

(a) The Arkansas State Board of Pharmacy may revoke any permit issued under this subchapter in the event the holder thereof allows any person other than an Arkansas-licensed pharmacist or those students or graduates of a college of pharmacy serving an internship to fill prescriptions, compound and dispense drugs or medicines, or otherwise perform the duties and functions of a licensed pharmacist.

(b) Whenever any person, firm, partnership, estate, or corporation holding any permit issued under this subchapter obtains a permit by false representations or knowingly violates any of the pharmacy laws or fails to comply with the rules of the board passed by authority of the pharmacy laws, the board shall revoke the holder's pharmacy permit.

(c) The board shall also revoke any permit issued under this subchapter when information in possession of the board shall disclose that the operations for which the permit was issued are not being conducted according to law or are being conducted so as to endanger the public health or safety.

History. Acts 1955, No. 57, §§ 13, 16; A.S.A. 1947, §§ 72-1028.1, 72-1028.2; Acts 2001, No. 910, § 8; 2019, No. 315, § 1589. **Amendments.** The 2019 amendment deleted "and regulations" following "rules" in (b).

17-92-409. Pharmacy library required.

There shall be kept in every pharmacy or other facility as identified in § 17-92-403 a library consisting of books, periodicals, and computer software as required by rules of the Arkansas State Board of Pharmacy.

History. Acts 1929, No. 72, § 11; Pope's Dig., § 4632; Acts 1983, No. 511, § 9; A.S.A. 1947, § 72-1022; Acts 2001, No. 910, § 10; 2019, No. 315, § 1590. **Amendments.** The 2019 amendment substituted "rules" for "regulations".

17-92-412. Nursing home consultant pharmacist.

(a) A nursing home consultant pharmacist and the nursing home administrator shall be jointly responsible to ensure that a pharmacist license is posted at the facility at all times.

(b) The Arkansas State Board of Pharmacy shall set by rule the standards by which the controlled and legend drugs and devices will be maintained in the nursing home or long-term care facility.

(c) The consultant pharmacist, in conjunction with the nursing home administrator and director of nurses, shall ensure the proper control and accountability, storage, and proper utilization of drugs and other legend devices dispensed to patients residing in the facility according to board standards as well as standards established by state and federal guidelines.

History. Acts 2001, No. 910, § 11; 2019, No. 315, §§ 1591, 1592; 2021, No. 2009, No. 355, § 6; 2011, No. 859, § 10; 63, § 6.

Amendments. The 2019 amendment substituted “rule” for “regulation” in (a)(1) and (b).
The 2021 amendment substituted “pharmacist” for “permit” in the section heading; deleted former (a)(1) and redesignated (a)(2) as (a); in (a), substituted “A nursing home consultant pharmacist” for

“The consultant pharmacist-in-charge” and “pharmacist license” for “valid permit”; substituted “Arkansas State Board of Pharmacy” for “board” in (b); and, in (c), substituted “consultant pharmacist” for “consultant pharmacist-in-charge” and “standards established” for “those established”.

17-92-413. Disclosure of ownership interest or possible conflicts of interest required — Prohibition on data mining.

A pharmacy, pharmacist, physician, employee, or entity that owns or controls, is owned or controlled by, or is under ownership or control with an insurance company, health clinic, hospital, rural health center, federally qualified health center, pharmacy benefits manager, pharmaceutical manufacturer, pharmaceutical wholesaler, or pharmacy benefits manager that provides a pharmacy benefits plan or program, including prescription drug coverage, or contracts with a third party for prescription drug services under a health benefit plan shall:

- (1) Disclose to the consumer any ownership interest or possible conflicts of interest with a pharmacy benefits manager, healthcare insurer, or healthcare payor; and
- (2) Not access and utilize patient information, including either medical information in patient charts or billing claims information, to market or contact patients in order to solicit the transfer of the patient to a particular pharmacy.

History. Acts 2021, No. 1053, § 2.

SUBCHAPTER 5 — GENERIC DRUGS AND PRICE LISTS

SECTION.
17-92-501. Penalty.
17-92-502. Rules.
17-92-503. Generic drug product and biological product substitutions.

SECTION.
17-92-505. Labeling.
17-92-506. Available drug product and biological product lists.
17-92-507. Maximum Allowable Cost Lists — Definitions.

17-92-501. Penalty.

Any person licensed or otherwise permitted to practice pharmacy in this state who shall violate any provisions of this subchapter shall be subject to discipline by the Arkansas State Board of Pharmacy, including, but not limited to, revocation of such license or permission, according to procedures established by law or by rules of the board.

History. Acts 1975, No. 436, § 6; A.S.A. 1947, § 72-1052; Acts 2019, No. 315, § 1593.

Amendments. The 2019 amendment substituted “rules” for “regulations”.

17-92-502. Rules.

The Arkansas State Board of Pharmacy may adopt such reasonable rules, not inconsistent with law, as it shall deem necessary to carry out the purposes and intentions of this subchapter.

History. Acts 1975, No. 436, § 7; 1983, deleted “and regulations” following No. 511, § 11; A.S.A. 1947, § 72-1053; “Rules” in the section heading; and substituted “rules” for “regulations”.
Acts 2019, No. 315, § 1594.

Amendments. The 2019 amendment

17-92-503. Generic drug product and biological product substitutions.

(a)(1)(A) Except as provided in subsection (b) of this section, when a pharmacist receives a prescription for a brand or trade name drug product or biological product, the pharmacist may dispense a generically equivalent drug product or interchangeable biological product only when there will be a cost savings for the patient.

(B) The pharmacist shall disclose the amount of the cost savings at the request of the patient.

(2) The total amount charged for the substituted generically equivalent drug product or interchangeable biological product or for dispensing the drug product or biological product shall not exceed the amount normally and regularly charged under comparable circumstances by the pharmacist for that drug product or biological product or for the dispensing of that drug product or biological product.

(3) A pharmacist may not dispense a drug product or interchangeable biological product with a total charge that exceeds the total charge of the drug product or biological product originally prescribed unless agreed to by the purchaser.

(b) The pharmacist shall not dispense a generically equivalent drug product or interchangeable biological product under subsection (a) of this section if:

(1) The prescriber, in the case of a prescription in writing signed by the prescriber, indicates in his or her own handwriting by name or initial that no substitution shall be made;

(2) The prescriber, in the case of a prescription other than one in writing signed by the prescriber, expressly indicates that the prescription is to be dispensed as communicated;

(3) The person for whom the drug product or biological product is prescribed indicates that the prescription is to be dispensed as written or communicated; or

(4) The Arkansas State Board of Pharmacy has determined that the drug product or biological product should not be substituted and has notified all pharmacists of that determination.

(c)(1) The Arkansas State Board of Pharmacy shall determine which drugs are generically equivalent and which biological products are interchangeable biological products as defined in § 17-92-101, relying on standards scientifically supported and generally accepted in the field

of pharmacy, and shall notify each licensed pharmacist and the Arkansas State Medical Board of this determination.

(2) In making this determination, the Arkansas State Board of Pharmacy may use a nationally recognized reference source that meets the requirements of this act, notifying each licensed pharmacist and the Arkansas State Medical Board of the reference source to be used and any additions or deletions the Arkansas State Board of Pharmacy may make in its discretion.

(d)(1) Within five (5) business days after dispensing an interchangeable biological product that has been substituted for a biological product, the dispensing pharmacist or his or her designee shall record the specific interchangeable biological product provided to the patient, including without limitation the name of the interchangeable biological product and the manufacturer of the interchangeable biological product.

(2) The record shall be electronically accessible to the prescriber through:

- (A) An interoperable electronic medical records system;
- (B) An electronic prescribing technology;
- (C) A pharmacy benefits management system; or
- (D) A pharmacy record.

(3) If requested by a prescriber, a pharmacist shall communicate to the prescriber within five (5) business days using facsimile, telephone, electronic transmission, or other prevailing means that an interchangeable biological product has been dispensed.

(4) A communication is not required when:

(A) An interchangeable biological product does not exist for the prescribed biological product; or

(B) A refill prescription for a biological product is not substituted with an interchangeable biological product on a subsequent filling of the prescription.

(5) The pharmacist or pharmacy shall maintain a record of biological products dispensed for at least two (2) years.

(6) Under subdivision (d)(2) of this section, the dispensing pharmacist or prescriber is not:

(A) Required to show proof that a prescriber has access to the record in any type of payment audit conducted by a payor or pharmacy benefits manager; or

(B) Subject to disciplinary action or civil penalties for failure to ensure that the record is accessible or for failure to access the record.

History. Acts 1975, No. 436, §§ 1, 2; A.S.A. 1947, §§ 72-1047, 72-1048; Acts 2001, No. 801, §§ 4, 5; 2019, No. 637, § 2.

Amendments. The 2019 amendment inserted "drug product and biological product" in the section heading; redesignated (a)(1) as (a)(1)(A); inserted "or inter-

changeable biological product", and inserted "or biological product" throughout (a) and (b), and made similar changes; in (a)(1)(A), deleted "lower cost" preceding "generically", and added "or interchangeable biological product only when there will be a cost savings for the patient";

added (a)(1)(B); inserted “and which biological products are interchangeable biological products” in (c)(1); and added (d).

17-92-505. Labeling.

(a)(1) The pharmacist filling a prescription for dispensing to an ultimate patient may affix to the container a label showing:

- (A) The pharmacy name, address, and telephone number;
- (B) The date of dispensing;
- (C) The serial number of the prescription;
- (D) The name of the patient;
- (E) The name of the prescribing practitioner;
- (F) Either:

(i) The trade name of the drug product, if any, or the generic name and identity of the manufacturer of the dispensed drug product, if the drug product appears generically listed on the drug formulary list as established by this subchapter; or

(ii) In the case of a biological product, the trade name of the biological product, if any, or the proper name of the biological product and identity of the manufacturer of the dispensed biological product;

- (G) The strength per unit dose of the medication;
- (H) The quantity of the medication; and
- (I) Directions for use.

(2) If a pharmacist dispenses a generically equivalent product or interchangeable biological product, the person for whom the medication is prescribed shall be informed before dispensing or the label should appropriately indicate the substitution.

(3) This subsection does not apply to the dispensing of medication to inpatients in hospitals.

(4) In the case of dispensing a drug product or biological product, the prescribing practitioner may indicate that the name, manufacturer, and strength of the medication dispensed shall be deleted from the label.

(b) An authorized person who fills a prescription for dispensing to an ultimate patient shall affix to the container a label showing:

(1) The trade name of the medication or the generic name of the medication unless directed to the contrary by the prescribing practitioner; or

(2) The trade name, if any, or the proper name of the biological product unless directed to the contrary by the prescribing practitioner.

History. Acts 1975, No. 436, § 4; 1979, No. 218, § 1; A.S.A. 1947, §§ 72-1050, 72-1050.1; Acts 2019, No. 637, § 3.

Amendments. The 2019 amendment redesignated (a)(1)(F) as (a)(1)(F)(i); added (a)(1)(F) and (a)(1)(F)(ii); substituted “drug product” for “medication” three times in (a)(1)(F)(i); in (a)(2), inserted “or interchangeable biological prod-

uct” and substituted “before” for “prior to”; substituted “This subsection does not apply” for “However, this subsection shall not apply” in (a)(3); substituted “In the case of dispensing a drug product or biological product” for “Further, in an appropriate manner” in (a)(4); substituted “An authorized person who fills a prescription” for “Any authorized person filling a pre-

scription" in (b); substituted "contrary by the prescribing practitioner; or" for "contrary by the physician. Failure to comply with this subsection shall be grounds for disciplinary action" in (b)(1); and added (b)(2).

17-92-506. Available drug product and biological product lists.

(a)(1) A pharmacist may display, within the confines of the pharmacy, lists of available drug products and biological products, other than controlled substances, and current charges for the drug products or biological products or for the dispensing of the drug products or biological products in specified quantities.

(2) Upon request, a pharmacy may make such lists available to its customers and other members of the public.

(b) The Arkansas State Board of Pharmacy shall maintain on the website of the board a link to the lists of all interchangeable biological products approved by the United States Food and Drug Administration.

History. Acts 1975, No. 436, § 5; A.S.A. 1947, § 72-1051; Acts 2019, No. 637, § 4.

Amendments. The 2019 amendment substituted "Available drug product and biological product" for "Price" in the sec-

tion heading; added the (a)(1) and (a)(2) designations; in (a)(1), inserted "and biological products", and "or biological products" twice; and added (b).

17-92-507. Maximum Allowable Cost Lists — Definitions.

(a) As used in this section:

(1)(A) "Maximum Allowable Cost List" means a listing of drugs or other methodology used by a pharmacy benefits manager, directly or indirectly, setting the maximum allowable payment to a pharmacy or pharmacist for a generic drug, brand-name drug, biologic product, or other prescription drug.

(B) "Maximum Allowable Cost List" includes without limitation:

(i) Average acquisition cost, including national average drug acquisition cost;

(ii) Average manufacturer price;

(iii) Average wholesale price;

(iv) Brand effective rate or generic effective rate;

(v) Discount indexing;

(vi) Federal upper limits;

(vii) Wholesale acquisition cost; and

(viii) Any other term that a pharmacy benefits manager or a healthcare insurer may use to establish reimbursement rates to a pharmacist or pharmacy for pharmacist services;

(2) "Pharmaceutical wholesaler" means a person or entity that sells and distributes prescription pharmaceutical products, including without limitation a full line of brand-name, generic, and over-the-counter pharmaceuticals, and that offers regular and private delivery to a pharmacy;

(3) "Pharmacist" means a licensed pharmacist as defined in § 17-92-101;

(4) "Pharmacist services" means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy as defined in § 17-92-101;

(5) "Pharmacy" means the same as in § 17-92-101;

(6) "Pharmacy acquisition cost" means the amount that a pharmaceutical wholesaler charges for a pharmaceutical product as listed on the pharmacy's billing invoice;

(7) "Pharmacy benefits manager" means an entity that administers or manages a pharmacy benefits plan or program;

(8) "Pharmacy benefits manager affiliate" means a pharmacy or pharmacist that directly or indirectly, through one (1) or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with a pharmacy benefits manager; and

(9) "Pharmacy benefits plan or program" means a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are employed in this state.

(b) Before a pharmacy benefits manager places or continues a particular drug on a Maximum Allowable Cost List, the drug:

(1) If the drug is a generically equivalent drug as defined in § 17-92-101, shall be listed as therapeutically equivalent and pharmaceutically equivalent "A" or "B" rated in the United States Food and Drug Administration's most recent version of the "Orange Book" or "Green Book" or have an NR or NA rating by Medi-Span, Gold Standard, or a similar rating by a nationally recognized reference;

(2) Shall be available for purchase by each pharmacy in the state from national or regional wholesalers operating in Arkansas; and

(3) Shall not be obsolete.

(c) A pharmacy benefits manager shall:

(1) Provide access to its Maximum Allowable Cost List to each pharmacy subject to the Maximum Allowable Cost List;

(2) Update its Maximum Allowable Cost List on a timely basis, but in no event longer than seven (7) calendar days from an increase of ten percent (10%) or more in the pharmacy acquisition cost from sixty percent (60%) or more of the pharmaceutical wholesalers doing business in the state or a change in the methodology on which the Maximum Allowable Cost List is based or in the value of a variable involved in the methodology;

(3) Provide a process for each pharmacy subject to the Maximum Allowable Cost List to receive prompt notification of an update to the Maximum Allowable Cost List; and

(4)(A)(i) Provide a reasonable administrative appeal procedure to allow pharmacies to challenge Maximum Allowable Cost List and reimbursements made under a Maximum Allowable Cost List for a specific drug or drugs as:

(a) Not meeting the requirements of this section; or

(b) Being below the pharmacy acquisition cost.

(ii) The reasonable administrative appeal procedure shall include the following:

(a) A dedicated telephone number, email address, and website for the purpose of submitting administrative appeals;

(b) The ability to submit an administrative appeal directly to the pharmacy benefits manager regarding the pharmacy benefits plan or program or through a pharmacy service administrative organization; and

(c) No less than thirty (30) business days to file an administrative appeal.

(B) The pharmacy benefits manager shall respond to the challenge under subdivision (c)(4)(A) of this section within thirty (30) business days after receipt of the challenge.

(C) If a challenge is made under subdivision (c)(4)(A) of this section, the pharmacy benefits manager shall within thirty (30) business days after receipt of the challenge either:

(i) If the appeal is upheld:

(a) Make the change in the maximum allowable cost list payment to at least the pharmacy acquisition cost;

(b) Permit the challenging pharmacy or pharmacist to reverse and rebill the claim in question;

(c) Provide the National Drug Code that the increase or change is based on to the pharmacy or pharmacist; and

(d) Make the change under subdivision (c)(4)(C)(i)(a) of this section effective for each similarly situated pharmacy as defined by the payor subject to the Maximum Allowable Cost List;

(ii) If the appeal is denied, provide the challenging pharmacy or pharmacist the National Drug Code and the name of the national or regional pharmaceutical wholesalers operating in Arkansas that have the drug currently in stock at a price below the maximum allowable cost as listed on the Maximum Allowable Cost List; or

(iii) If the National Drug Code provided by the pharmacy benefits manager is not available below the pharmacy acquisition cost from the pharmaceutical wholesaler from whom the pharmacy or pharmacist purchases the majority of prescription drugs for resale, then the pharmacy benefits manager shall adjust the maximum allowable cost as listed on the Maximum Allowable Cost List above the challenging pharmacy's pharmacy acquisition cost and permit the pharmacy to reverse and rebill each claim affected by the inability to procure the drug at a cost that is equal to or less than the previously challenged maximum allowable cost.

(d)(1) A pharmacy benefits manager shall not reimburse a pharmacy or pharmacist in the state an amount less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services.

(2) The amount shall be calculated on a per unit basis based on the same generic product identifier or generic code number.

(e) A pharmacy or pharmacist may decline to provide the pharmacist services to a patient or pharmacy benefits manager if, as a result of a Maximum Allowable Cost List, a pharmacy or pharmacist is to be paid

less than the pharmacy acquisition cost of the pharmacy providing pharmacist services.

(f)(1) This section does not apply to a Maximum Allowable Cost List maintained by the Arkansas Medicaid Program or the Employee Benefits Division.

(2) This section shall apply to the pharmacy benefits manager employed by the Arkansas Medicaid Program or the division if, at any time, the Arkansas Medicaid Program or the division engages the services of a pharmacy benefits manager to maintain a Maximum Allowable Cost List.

(g)(1) A violation of this section is a deceptive and unconscionable trade practice under the Deceptive Trade Practices Act, § 4-88-101 et seq., and a prohibited practice under the Arkansas Pharmacy Benefits Manager Licensure Act, § 23-92-501 et seq., and the Trade Practices Act, § 23-66-201 et seq.

(2) This section is not subject to § 4-88-113(f)(1)(B).

History. Acts 2013, No. 1194, § 1; 2015, No. 900, § 1; 2018 (2nd Ex. Sess.), No. 1, § 3; 2018 (2nd Ex. Sess.), No. 3, § 3; 2019, No. 994, §§ 1–5.

Amendments. The 2019 amendment added the (a)(1)(A) designation; in (a)(1)(A), inserted “or other methodology”, inserted “directly or indirectly”, substituted “allowable payment” for “allowable cost on which reimbursement”, and substituted “pharmacist for a generic drug, brand-name drug, biologic product, or other prescription drug” for “pharmacist may be based”; added (a)(1)(B); in (a)(4), substituted “and services” for “or services”, inserted “or any combination of products, goods, and services”, and substituted “pharmacy as defined in § 17-92-

101” for “pharmacy in Arkansas”; substituted “If the drug is a generically equivalent drug as defined in § 17-92-101, shall be listed” for “Shall be listed” in (b)(1); in the introductory language of (c)(4)(A)(i), substituted the first occurrence of “cost list” for “costs” and inserted “list” following the second occurrence of “cost”; substituted “telephone number, email address, and website” for “telephone number and email address or website” in (c)(4)(A)(ii)(a); substituted “thirty (30) business days” for “seven (7) business days” in (c)(4)(A)(ii)(c), (c)(4)(B), and in the introductory language of (c)(4)(C); added “list payment to at least the pharmacy acquisition cost” in (c)(4)(C)(i)(a); made no changes to (e); and made stylistic changes.

CASE NOTES

Federal Preemption.

Acts 2015, No. 900, which amended this section and requires pharmacy benefit managers to reimburse Arkansas pharmacies at a price equal to or higher than that which the pharmacy paid to buy a prescription drug from a wholesaler, has neither an impermissible connection with nor reference to the Employee Retirement

Income Security Act of 1974 (ERISA) and is therefore not preempted. Act 900 is merely a form of cost regulation, and its enforcement mechanisms do not require plan administrators to structure their benefit plans in any particular manner. *Rutledge v. Pharm. Care Mgmt. Ass’n*, — U.S. —, 141 S. Ct. 474, 208 L. Ed. 2d 327 (2020).

SUBCHAPTER 6 — HOSPITAL PHARMACIES ACT

SECTION.

17-92-602. Definitions.

17-92-603. [Repealed.]

17-92-604. Regulatory authority.

SECTION.

17-92-605. Hospital pharmacy license — Services permitted.

17-92-602. Definitions.

As used in this subchapter:

- (1) "Hospital" means a hospital as defined in § 20-9-201;
- (2) "Hospital employee" means any individual employed by a hospital whose compensation for services or labor actually performed for a hospital is reflected on the payroll records of a hospital;
- (3) "Hospital pharmacy" means the place or places in which drugs, chemicals, medicines, prescriptions, or poisons are prepared for distribution and administration for the use or benefit of patients in a hospital. The "hospital pharmacy" may also provide pharmacy services to patients in a "swing bed" within the hospital that may periodically swing back and forth from being a short-term acute hospital bed to a longer-term nursing home bed. The "hospital pharmacy" shall also mean the place or places in which drugs, chemicals, medicines, prescriptions, or poisons are compounded for the dispensing to hospital employees, members of the immediate families of hospital employees, patients being discharged, and for other persons in emergency situations;
- (4) "Hospital pharmacy technicians" means persons other than licensed pharmacists who perform duties in conjunction with the overall hospital medication distribution system for inpatients; and
- (5) "Licensed pharmacist" means any person licensed to practice pharmacy by the Arkansas State Board of Pharmacy.

History. Acts 1975, No. 659, § 2; 1981, No. 584, § 1; A.S.A. 1947, § 72-1055; Acts 1999, No. 105, § 15; 2019, No. 386, § 44.

Amendments. The 2019 amendment repealed former (1).

17-92-603. [Repealed.]

A.C.R.C. Notes. The repeal of this section by Acts 2019, No. 175 superseded the amendment of this section by Acts 2019, No. 315. The amendment by Acts 2019, No. 315 deleted "regulations" following "rules" in subsection (a).

Publisher's Notes. This section, con-

cerning the Advisory Committee for Hospital Pharmacies, was repealed by Acts 2019, No. 175, § 1, effective July 24, 2019. The section was derived from Acts 1975, No. 659, § 6; A.S.A. 1947, § 72-1059; Acts 2019, No. 315, § 1595.

17-92-604. Regulatory authority.

(a) The Arkansas State Board of Pharmacy shall adopt, promulgate, and enforce rules and standards as may be necessary to the regulation of the operation of a hospital pharmacy and for the accomplishment of all other purposes of this subchapter.

(b) The board may modify, amend, or rescind the rules and standards, provided the modification, amendment, or rescission does not in any manner defeat the purposes of this subchapter.

History. Acts 1975, No. 659, § 7; A.S.A. 1947, § 72-1060; Acts 1999, No. 105, § 16; 2019, No. 175, § 2; 2019, No. 315, § 1596.

Amendments. The 2019 amendment by No. 175 substituted “rules” for “such rules, regulations” in (a); deleted (b); redesignated former (c) as (b); and in (b)

deleted “After consultation with the committee, from time to time”, and “regulations” following “rules”.

The 2019 amendment by No. 315 deleted “regulations” following “rules” in (a) and made similar changes three times in (b) [now repealed] and in (c) [now (b)].

17-92-605. Hospital pharmacy license — Services permitted.

(a) All hospital pharmacies shall be licensed by the Arkansas State Board of Pharmacy as provided for by this subchapter. The hospital pharmacy license shall be issued in the name of the hospital.

(b) Any hospital receiving a permit shall advise the board of the name of:

(1) The hospital administrator or other person assuming responsibility for the general administration of the hospital;

(2) The director of the pharmacy, or other person assuming responsibility for the general operation of the hospital pharmacy, who shall be a licensed pharmacist; and

(3) All other licensed pharmacists employed by the hospital in its hospital pharmacy.

(c) The hospital and the director of pharmacy shall be required to report to the board any change in licensed pharmacist personnel.

(d) Upon the receipt of a hospital pharmacy license, a hospital pharmacy may provide the following pharmaceutical services:

(1) Prepare for distribution and administration of drugs, chemicals, medicines, prescriptions, or poisons for the use or benefit of the patients in the hospital as set forth in § 17-92-602(3); and

(2) Compound or dispense drugs, chemicals, medicines, prescriptions, or poisons for the use or benefit of the hospital’s employees, members of the immediate families of hospital employees, patients being discharged, and other persons in emergency situations.

History. Acts 1975, No. 659, §§ 3, 4; 1981, No. 584, § 2; A.S.A. 1947, §§ 72-1056, 72-1057.

ing set out to change the reference in (d)(1) from § 17-92-602(4) to § 17-92-602(3).

Publisher’s Notes. This section is be-

SUBCHAPTER 7 — PROGRAM FOR PHARMACISTS IMPAIRED BY CHEMICAL DEPENDENCY

SECTION.

17-92-701. Definitions.

17-92-701. Definitions.

As used in this subchapter:

(1) "Board-approved intervenors" means persons trained in intervention and designated by the Arkansas State Board of Pharmacy to implement the intervention process when necessary;

(2) "Impaired pharmacist" means a pharmacist who is unable to practice pharmacy with reasonable skill, competency, or safety to the public because of substance abuse;

(3) "Impaired pharmacist program" means a plan approved by the board for intervention, treatment, and rehabilitation of an impaired pharmacist;

(4) "Intervention" means a process whereby an allegedly impaired pharmacist is confronted by the board or board-approved intervenors who provide documentation that a problem exists and attempt to convince the pharmacist to seek evaluation and treatment;

(5) "Rehabilitation" means the process whereby an impaired pharmacist advances in an impaired pharmacist program to an optimal level of competence to practice pharmacy without endangering the public; and

(6) "Verification" means a process whereby alleged professional impairment is identified or established.

History. Acts 1991, No. 741, § 1; 2019, No. 386, §§ 45, 46.

Amendments. The 2019 amendment repealed former (1) and (3).

SUBCHAPTER 8 — CERTIFICATION AND REGISTRATION OF PHARMACIST ASSISTANTS**SECTION.**

17-92-801. Powers and duties of Arkansas State Board of Pharmacy.

17-92-801. Powers and duties of Arkansas State Board of Pharmacy.

(a) The Arkansas State Board of Pharmacy shall provide that hospital pharmacy technicians as in § 17-92-602 and pharmacy technicians as in § 17-92-101(17)(C), and hereinafter referred to as pharmacy technicians, register with or be certified by the board, or both.

(b) The board may provide reasonable qualifications for a person to be certified as a pharmacy technician or registered as a pharmacy technician, or both, including without limitation, the education, training, and testing that the board deems necessary to preserve and protect the public health.

(c) The board may suspend or revoke the registration of any person certified as a pharmacy technician or registered as a pharmacy technician, or both, but only after an opportunity for a hearing before the board upon reasonable notice to the person in writing.

(d) Grounds for suspension or revocation of registration or certification as a pharmacy technician, or both, are the following:

- (1) Violation of any law or rule regarding the practice of pharmacy;
- (2) Violation of any law or rule regarding legend drugs or controlled substances; or
- (3) Violation of any rule adopted by the board regarding pharmacy technicians.

History. Acts 1993, No. 922, § 1; 1997, No. 1029, § 5; 1999, No. 105, § 17; 2019, No. 315, § 1597.

Amendments. The 2019 amendment substituted “rule” for “regulation” in (d)(1), (d)(2), and (d)(3).

SUBCHAPTER 9 — SUPPLIERS

SECTION.

17-92-903. Exemption from license and permit requirements.

17-92-906. Rules.

SECTION.

17-92-908. Revocation or suspension of license.

17-92-909. [Repealed.]

17-92-903. Exemption from license and permit requirements.

(a) The licensure requirements of this subchapter and any retail pharmacy permit requirements that may apply to the distribution or provision of legend medical gases, medical equipment, legend devices, and medical supplies, except legend drugs, do not apply to the following unless the following have a separate company, corporation, division, or other business entity that is in the business of providing medical equipment for sale or rent to a patient at his or her home as covered by this subchapter:

- (1) Home health agencies;
- (2) Hospitals;
- (3) Manufacturers and wholesale distributors when not selling directly to the patient;
- (4) Healthcare practitioners legally eligible to prescribe or order home medical equipment, medical gases, and legend devices;
- (5) Medical doctors, physical therapists, respiratory therapists, occupational therapists, speech pathologists, optometrists, chiropractors, and podiatrists who use home medical equipment or legend devices, or both, to treat patients;
- (6) Nurses who use but do not sell home medical equipment or legend devices, or both, to their patients;
- (7) Pharmacies;
- (8) Hospice programs;
- (9) Nursing homes;
- (10) Veterinarians;
- (11) Dentists; and
- (12) Emergency medical services.

(b) Although excluded from a separate licensure requirement for medical equipment, pharmacies shall be subject to the same rules for the sale or rental of medical equipment covered by this subchapter.

History. Acts 1995, No. 1101, § 5; deleted “and regulations” following “rules” 2019, No. 315, § 1598.

Amendments. The 2019 amendment

in (b).

17-92-906. Rules.

(a)(1) The Arkansas State Board of Pharmacy shall adopt rules for the distribution of home medical equipment, legend devices, and medical gases which promote the public health and welfare and which comply with, at least, the minimum standards, terms, and conditions of federal laws and federal regulations.

(2) The rules shall include, without limitation:

(A) Minimum information from each home medical equipment, legend device, and medical gas supplier required for licensing and renewal of licenses;

(B) Minimum qualifications of persons who engage in the distribution of these products;

(C) Appropriate education or experience, or both, of persons employed in distribution of these products who assume responsibility for positions related to compliance with state licensing requirements;

(D) Minimum requirements for the storage and handling of these products;

(E) Minimum requirements for the establishment and maintenance of distribution records for these products; and

(F) Federal and state labeling requirements.

(b) State rules shall not apply to the following:

(1) Home health agencies;

(2) Hospitals;

(3) Manufacturers and wholesale distributors when not selling directly to the patient;

(4) Healthcare practitioners legally eligible to prescribe or order home medical equipment, medical gases, and legend devices;

(5) Medical doctors, physical therapists, respiratory therapists, occupational therapists, speech pathologists, optometrists, chiropractors, and podiatrists who use home medical equipment or legend devices, or both, to treat patients;

(6) Nurses who use but do not sell home medical equipment or legend devices, or both, to their patients;

(7) Hospice programs;

(8) Nursing homes; and

(9) Veterinarians.

(c) No rules promulgated to implement this subchapter shall be effective until they have been reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

History. Acts 1995, No. 1101, §§ 7, 12; substituted “Rules” for “Regulations” in the section heading; and substituted “rules” for “regulations” throughout the 1997, No. 179, § 15; 2019, No. 315, § 1599.

Amendments. The 2019 amendment section.

17-92-908. Revocation or suspension of license.

The Arkansas State Board of Pharmacy may revoke or suspend licenses or may refuse to issue any license under this subchapter if the holder or applicant has committed or is found guilty by the board of any of the following:

(1) Violation of any federal, state, or local law or regulation relating to medical equipment, medical gases, and medical supplies, except legend drugs and legend devices;

(2) Violation of any provisions of this subchapter or any rule promulgated hereunder; or

(3) Commission of an act or engaging in a course of conduct which constitutes a clear and present danger to the public health and safety.

History. Acts 1995, No. 1101, § 9; 2019, No. 315, § 1600.

Amendments. The 2019 amendment substituted “rule” for “regulation” in (2).

17-92-909. [Repealed.]

A.C.R.C. Notes. The repeal of this section by Acts 2019, No. 174 superseded the amendment of this section by Acts 2019, No. 315. The amendment by Acts 2019, No. 315 substituted “rules” for “regulations” in subsection (d).

Publisher’s Notes. This section, concerning advisory committee to the board, was repealed by Acts 2019, No. 174, § 1, effective July 24, 2019. The section was derived from Acts 1995, No. 1101, § 8; 2019, No. 315, § 1601.

SUBCHAPTER 11 — PRESCRIPTION DRUG REDISPENSING PROGRAM**SECTION.**

17-92-1104. Donations of unused prescription drugs.

17-92-1104. Donations of unused prescription drugs.

(a)(1) A charitable clinic may accept for redispensing prescription drugs obtained from a nursing facility by the clinic pharmacy for relabeling and dispensing free of charge and pursuant to a valid prescription order to an indigent patient.

(2) The donor patient shall be considered to be the owner of the prescription drug and entitled to donate the prescription drug for use by a charitable clinic.

(b)(1)(A)(i) Any nursing home may enter into a contract with any charitable clinic for the transfer of prescription drugs under this section.

(ii) No prescription drugs may be transferred without a contract.

(B) A contract entered into under subdivision (b)(1)(A) of this section shall:

(i) Be approved by the Arkansas State Board of Pharmacy, in cooperation with the Department of Health and the Department of Human Services; and

(ii) Set out procedures for ensuring a safe chain of custody to protect the safety of all transferred drugs.

(C) The contract may specify that the charitable clinic will:

(i) Define a specified set of prescription drugs that will be transferred from the nursing home to the charitable clinic;

(ii) Request from time to time the transfer of particular prescription drugs;

(iii) Receive all the prescription drugs that the nursing home is authorized to transfer under this section; or

(iv) Make such other provisions as may be approved by the board.

(2) The pharmacist-in-charge at the charitable clinic shall be responsible for determining the description of the prescription drugs that will be included in the contract.

(c) Donations of prescription drugs to a charitable clinic pharmacy shall meet the following requirements:

(1)(A) The charitable clinic pharmacy accepts the prescription drugs only in their original sealed and tamper-evident packaging.

(B) However, the charitable clinic pharmacy may accept prescription drugs packaged in single-unit doses or blister packs with the outside packaging opened if the single-unit dose packaging remains intact;

(2) A pharmacist of the charitable clinic pharmacy determines that the prescription drug is not adulterated or misbranded and is safe to dispense;

(3) No product of which the integrity cannot be assured is accepted for redispensing by the pharmacist of the charitable clinic pharmacy;

(4) The prescription drugs are physically transferred from the nursing facility to a charitable clinic pharmacy by a person authorized by the board to pick up the prescription drugs for the charitable clinic;

(5)(A) The donor executes a form stating that the donor is authorized to donate the prescription drugs and intends to voluntarily donate them to a charitable clinic pharmacy.

(B) The nursing facility retains the donor form along with other acquisition records;

(6) The donor patient's name, prescription number, and any other identifying marks are obliterated from the packaging before the nursing facility sends the prescription drug to the charitable clinic;

(7) The drug name, strength, and expiration date remain on the prescription drug package label;

(8) The redispensed prescription drug is assigned the same expiration date as on the original package;

(9) Expired prescription drugs accepted by a charitable clinic pharmacy are not redispensed and are destroyed according to the charitable clinic pharmacy's destruction procedures; and

(10) The charitable clinic pharmacy accepts no controlled substances.

(d)(1) If a nursing facility that releases prescription drugs to a charitable clinic receives notice from a pharmacy that a prescription drug has been recalled, the nursing facility shall inform the clinic of the recall.

(2) If a charitable clinic receives a recall notification from a nursing facility, the clinic shall perform a uniform destruction of all of the recalled prescription drug in the facility.

(e) No prescription drug dispensed through a charitable clinic pharmacy shall be eligible for reimbursement from the Arkansas Medicaid Program.

(f) Indigent patients receiving prescription drugs through the prescription drug redispensing program shall sign a waiver form releasing the nursing facility, the donor, and the donor's estate from liability.

(g) The board shall promulgate rules to develop:

(1) Forms and procedures for authorizations and certifications required under subdivision (c)(4) of this section;

(2) The donor consent form required under subdivision (c)(5) of this section;

(3) The waiver forms required under subsection (f) of this section; and

(4)(A) Specific requirements for a charitable clinic pharmacy or other specialty pharmacy for the medically indigent as defined by rules of the board to qualify for participation in and to participate in the prescription drug redispensing program.

(B) On request, the board shall provide the information required under subdivision (g)(4)(A) of this section to charitable clinics.

(h)(1) The following persons and entities that participate in the prescription drug redispensing program shall not be subject to any professional disciplinary action or criminal prosecution for actions taken under the prescription drug redispensing program:

(A) The donor and the donor's estate;

(B) A nursing facility;

(C) The prescribing physician, physician's assistant, registered nurse, advanced practice nurse, or nurse practitioner;

(D) Pharmacists and pharmacy technicians except when the board has promulgated rules dealing specifically with the prescription drug redispensing program;

(E) The charitable clinic;

(F) The Department of Health;

(G) The Department of Human Services; or

(H) The board.

(2) Participation in the prescription drug redispensing program shall not be used as an independent basis for a claim of liability in tort or other civil action against any person or entity, including, but not limited to:

(A) The donor and the donor's estate;

(B) A nursing facility;

(C) The prescribing physician, physician's assistant, nurse practitioner, or nurse;

(D) The charitable clinic;

(E) The charitable clinic pharmacy acting in conformity with board rules;

(F) The pharmacist who originally dispensed the donated prescription drugs acting in conformity with board rules;

(G) A pharmacist dispensing donated prescription drugs acting in conformity with board rules;

(H) The Department of Health;

(I) The Department of Human Services; or

(J) The board.

(3)(A) In the absence of bad faith, a prescription drug manufacturer shall not be subject to criminal prosecution or liability in tort or other civil action for injury, death, or loss to person or property for matters related to the donation, acceptance, or dispensing of a prescription drug manufactured by the prescription drug manufacturer that is donated by any person under the prescription drug redispensing program, including, but not limited to, liability for failure to provide:

(i) Product or consumer package insert information; or

(ii) The expiration date of the donated prescription drug.

(B) Subdivision (h)(3)(A) of this section does not apply to a previously undisclosed product defect.

History. Acts 2005, No. 162, § 1; 2019, substituted “rules” for “regulations” in No. 315, §§ 1602, 1603. (h)(1)(D), (h)(2)(E), (h)(2)(F), and (h)(2)(G).

Amendments. The 2019 amendment

SUBCHAPTER 12 — ARKANSAS PHARMACY AUDIT BILL OF RIGHTS

SECTION.

17-92-1201. Arkansas Pharmacy Audit
Bill of Rights.

17-92-1201. Arkansas Pharmacy Audit Bill of Rights.

(a) This subchapter shall be known and may be cited as the “Arkansas Pharmacy Audit Bill of Rights”.

(b) Notwithstanding any other law, when an audit of the records of a pharmacy is conducted by a managed-care company, an insurance company, a third-party payor, or any entity that represents responsible parties such as companies or groups, the audit shall be conducted in accordance with the following bill of rights:

(1) The entity conducting the initial on-site audit shall give the pharmacy notice at least one (1) week before conducting the initial on-site audit for each audit cycle;

(2) Any audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist;

(3)(A)(i) Any clerical or recordkeeping error, such as a typographical error, scrivener’s error, or computer error, regarding a required document or record shall not in and of itself constitute fraud.

(ii) However, a claim arising under subdivision (b)(3)(A)(i) of this section may be subject to recoupment.

(B) A claim arising under subdivision (b)(3)(A)(i) of this section is not subject to criminal penalties without proof of intent to commit fraud;

(4) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug;

(5)(A) A finding of an overpayment or underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.

(B) However, recoupment of claims under subdivision (b)(5)(A) of this section shall be based on the actual overpayment unless the projection for overpayment or underpayment is part of a settlement by the pharmacy;

(6)(A) Where an audit is for a specifically identified problem that has been disclosed to the pharmacy, the audit shall be limited to claims that are identified by prescription number.

(B) For an audit other than described in subdivision (b)(6)(A) of this section, an audit shall be limited to twenty-five (25) prescriptions that have been randomly selected.

(C) If an audit reveals the necessity for a review of additional claims, the audit shall be conducted on site.

(D) Except for audits initiated under subdivision (b)(6)(A) of this section, an entity shall not initiate an audit of a pharmacy more than two (2) times in a calendar year;

(7)(A) A recoupment shall not be based on:

(i) Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the Arkansas State Board of Pharmacy; or

(ii)(a) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the Arkansas State Board of Pharmacy.

(b) This subdivision (b)(7) applies only to audits of claims submitted for payment on or after January 1, 2012.

(B) Subdivisions (b)(7)(A)(i) and (ii) of this section do not apply in cases of United States Food and Drug Administration regulation or drug manufacturer safety programs;

(8) Recoupment shall only occur following the correction of a claim and shall be limited to amounts paid in excess of amounts payable under the corrected claim;

(9) Except for Medicare claims, approval of drug, prescriber, or patient eligibility upon adjudication of a claim shall not be reversed unless the pharmacy or pharmacist obtained the adjudication by fraud or misrepresentation of claim elements;

(10) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(11) A pharmacy shall be allowed at least thirty (30) days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;

(12) The period covered by an audit shall not exceed twenty-four (24) months from the date the claim was submitted to or adjudicated by a managed-care company, an insurance company, a third-party payor, or any entity that represents such companies or groups;

(13) Unless otherwise consented to by the pharmacy, an audit shall not be initiated or scheduled during the first seven (7) calendar days of any month due to the high volume of prescriptions filled during that time;

(14)(A) The preliminary audit report shall be delivered to the pharmacy within one hundred twenty (120) days after conclusion of the audit.

(B) A final audit report shall be delivered to the pharmacy within six (6) months after receipt of the preliminary audit report or the final appeal as provided for in subsection (c) of this section, whichever is later; and

(15) Notwithstanding any other provision in this subsection, the agency conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.

(c) Recoupments of any disputed funds shall only occur after final internal disposition of the audit, including the appeals process as set forth in subsection (d) of this section.

(d)(1) Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity.

(2) If, following the appeal, the entity finds that an unfavorable audit report or any portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the audit report without any further proceedings.

(e) Each entity conducting an audit shall provide a copy of the final audit report to the plan sponsor after completion of any review process.

(f)(1) The full amount of any recoupment on an audit shall be refunded to the responsible party.

(2) Except as provided in subdivision (f)(3) of this section, a charge or assessment for an audit shall not be based, directly or indirectly, on amounts recouped.

(3) Subdivision (f)(2) of this section does not prevent the entity conducting the audit from charging or assessing the responsible party, directly or indirectly, based on amounts recouped if both the following conditions are met:

(A) The responsible party and the entity have a contract that explicitly states the percentage charge or assessment to the responsible party; and

(B) A commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly on amounts recouped.

(g) This section does not apply to any audit, review, or investigation that involves alleged fraud, willful misrepresentation, or abuse, including without limitation:

- (1) Medicaid fraud as defined in § 5-55-111;
- (2) Abuse or fraud as defined in § 20-77-1702; or
- (3) Insurance fraud.

(h) The Insurance Commissioner shall:

- (1) Administer and enforce this subchapter; and
- (2) Promulgate rules to implement the purposes and requirements of this subchapter.

History. Acts 2007, No. 843, § 1; 2011, No. 517, §§ 1, 2; 2021, No. 665, § 1.

A.C.R.C. Notes. Acts 2021, No. 665, § 8, provided: “Severability Clause. If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared severable.”

Acts 2021, No. 665, § 9, provided: “Rules.

“(a) When adopting the initial rules required under Section 1 of this act, the Insurance Commissioner shall file the fi-

nal rules with the Secretary of State for adoption under § 25-15-204(f):

“(1) On or before January 1, 2022; or

“(2) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

“(b) The commissioner shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rules for approval before January 1, 2022.”

Amendments. The 2021 amendment added (h).

CHAPTER 93

PHYSICAL THERAPISTS

SUBCHAPTER.

3. LICENSING.
4. ATHLETIC TRAINERS.
5. PHYSICAL THERAPY LICENSURE COMPACT.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF PHYSICAL THERAPY

A.C.R.C. Notes. Acts 2021, No. 932, § 1, provided: “Evaluation and restructuring of licensure fees related to practice of physical therapy.

“(a)(1) The Arkansas State Board of Physical Therapy shall conduct an evaluation of licensure fees related to the practice of physical therapy, including the license by reciprocity fee, and restructure the fees.

“(2) The evaluation described in subdivision (a)(1) of this section shall include:

“(A) A fiscal impact statement;

“(B) Information about the use of licensure fees; and

“(C) A comparison of licensure fees related to physical therapy in the surrounding states.

“(b)(1) The board shall report on the findings of the activities described in subsection (a) of this section to the Legislative Council or an appropriate subcommittee of the Legislative Council.

“(2) The report described in subdivision (b)(1) of this section shall include recommendations for legislative changes or rule changes, or both.

“(3)(A) If the report includes recommendations for rule changes, the board shall promulgate rules necessary to imple-

ment the recommendations under this section.

“(B) When adopting rules to implement the recommendations under this section, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

- “(i) On or before December 31, 2021; or
- “(ii) If approval under § 10-3-309 has not occurred by December 31, 2021, as

soon as practicable after approval under § 10-3-309.

“(C) The board shall file the proposed rule changes with the Legislative Council under § 10-3-309(c) sufficiently in advance of December 31, 2021, so that the Legislative Council may consider the rule for approval before December 31, 2021.”

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-93-303. Physical therapists.
- 17-93-304. Physical therapist assistants.
- 17-93-308. Revocation, suspension, or denial — Grounds.
- 17-93-309. Revocation, suspension, or denial — Proceedings.

SECTION.

- 17-93-311. Civil penalties.
- 17-93-313. Notice of malpractice claim or suit.

17-93-303. Physical therapists.

(a)(1) The Arkansas State Board of Physical Therapy shall license as a physical therapist each applicant who proves to the satisfaction of the board his or her fitness for licensure under the terms of this chapter.

(2) The license shall be prima facie evidence of the right of that person to practice physical therapy subject to the conditions and limitations of this chapter.

(b) Each physical therapist applicant shall:

- (1) Be at least twenty-one (21) years of age;
- (2) Have graduated from a school of physical therapy accredited by a national accreditation agency approved by the board;
- (3) Have passed examinations selected and approved by the board;
- (4) Submit fees as determined by the board; and
- (5)(A) Apply to the Identification Bureau of the Division of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(B) The criminal background check shall conform to the applicable federal standards, as existing on January 1, 2019, and shall include the taking of fingerprints.

(C) The applicant shall sign a release of information to the board and be responsible to the Division of Arkansas State Police for the payment of any fee associated with the criminal background check.

(D) Upon completion of the criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the board all information obtained concerning the commission by the applicant of any offense listed.

(c)(1) Upon payment of the fees, applicants shall be given examinations on the following subjects: the applied sciences of anatomy,

neuroanatomy, kinesiology, physiology, pathology, psychology, physics, neurology, orthopedics, pediatrics, surgery, medical ethics, and technical procedures in the practice of physical therapy as defined in this chapter, and any other subjects the board considers necessary or desirable.

(2) The national examination shall test entry-level competency related to physical therapy theory, examination and evaluation, diagnosis, prognosis, treatment intervention, prevention, and consultation.

(3)(A)(i) Upon payment of all appropriate fees, applicants who do not pass the examination after the first attempt may retake the examination one (1) additional time without reapplication for licensure.

(ii) The reexamination must take place within six (6) months after the first failure.

(B) Before being approved by the board for subsequent testing beyond two (2) attempts, the applicant shall reapply and demonstrate evidence satisfactory to the board of having successfully completed additional clinical training or course work, or both, as determined by the board.

(d)(1)(A) A license fee or renewal fee in an amount to be determined by the board shall be paid annually by each physical therapist who holds a license to practice physical therapy in the State of Arkansas.

(B) The renewal fee shall be paid no later than March 1 of each year.

(2) Failure to renew the license and pay the fee by March 1 shall cause the license of any person who fails to renew to expire automatically.

(3) A delinquent licensee may be reinstated by paying all delinquent fees and a penalty in an amount to be determined by the board for each year or part of a year he or she has been delinquent.

(e) An applicant for a license as a physical therapist who has been educated outside the United States shall:

(1) Complete the application process, including payment of fees;

(2) Provide written proof that the applicant's school of physical therapy is recognized by its own ministry of education or equivalent agency;

(3) Undergo a credentials evaluation as directed by the board to determine that the applicant has met uniform criteria for educational requirements as further established by rules of the board;

(4) Complete any additional education required by the board;

(5) Pass the board-approved English proficiency examination if the applicant's native language is not English;

(6) Pass all examinations required by the board under this chapter; and

(7) Comply with all requirements in rules promulgated by the board.

History. Acts 1959, No. 141, §§ 6, 7, 11; 303, §§ 1, 2; 1993, No. 1219, § 21; 1995, 1973, No. 139, § 2; 1979, No. 631, § 3; No. 742, § 2; 2001, No. 1412, § 5; 2009, A.S.A. 1947, §§ 72-1322, 72-1323, 72- No. 1471, § 5; 2019, No. 314, § 1; 2019, 1327; Acts 1987, No. 503, § 2; 1991, No. No. 990, § 92.

Amendments. The 2019 amendment by No. 314 added (b)(5).

The 2019 amendment by No. 990 deleted former (b)(2) and redesignated the remaining subdivisions accordingly.

17-93-304. Physical therapist assistants.

(a) The Arkansas State Board of Physical Therapy shall license as a physical therapist assistant and shall issue a license to a person who:

(1) Satisfactorily passes the examinations provided for in this chapter and otherwise meets the requirements for qualification under this chapter and pays the fees as determined by the Arkansas State Board of Physical Therapy; or

(2) Was licensed under the rules of the Arkansas State Medical Board as a physical therapist assistant before March 28, 1979.

(b) Each physical therapist assistant applicant shall:

(1) Be at least eighteen (18) years of age;

(2) Have graduated from a school of physical therapy accredited by a national accreditation agency approved by the Arkansas State Board of Physical Therapy;

(3) Have passed examinations selected and approved by the Arkansas State Board of Physical Therapy;

(4) Submit fees as determined by the Arkansas State Board of Physical Therapy; and

(5)(A) Apply to the Identification Bureau of the Division of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(B) The criminal background check shall conform to the applicable federal standards, as existing on January 1, 2019, and shall include the taking of fingerprints.

(C) The applicant shall sign a release of information to the Arkansas State Board of Physical Therapy and be responsible to the Division of Arkansas State Police for the payment of any fee associated with the criminal background check.

(D) Upon completion of the criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the Arkansas State Board of Physical Therapy all information obtained concerning the commission by the applicant of any offense listed.

(c)(1)(A) Upon payment of all appropriate fees, applicants who do not pass the examination after the first attempt may retake the examination one (1) additional time without reapplication for licensure.

(B) The reexamination must take place within six (6) months after the first failure.

(2) Before being approved by the Arkansas State Board of Physical Therapy for subsequent testing beyond two (2) attempts, the applicant shall reapply and demonstrate evidence satisfactory to the Arkansas State Board of Physical Therapy of having successfully completed

additional clinical training or course work, or both, as determined by the Arkansas State Board of Physical Therapy.

(d)(1) A physical therapist assistant who is licensed under this chapter shall pay a license fee and annual renewal fee in an amount to be determined by the Arkansas State Board of Physical Therapy.

(2) The renewal fee shall be paid no later than March 1 of each year.

(3)(A) A failure to renew and pay the renewal fee by March 1 shall cause the license to expire automatically.

(B) A licensee whose license has expired for failure to meet the renewal date may be reinstated by paying all delinquent fees and a penalty in an amount to be determined by the Arkansas State Board of Physical Therapy for each year or part of a year that he or she has failed to renew.

History. Acts 1959, No. 141, §§ 6, 9; 1973, No. 139, § 2; 1979, No. 631, §§ 3, 5; A.S.A. 1947, §§ 72-1322, 72-1325; Acts 1991, No. 303, § 3; 2001, No. 1412, § 6; 2009, No. 1471, § 5; 2019, No. 314, § 2; 2019, No. 990, § 93.

Amendments. The 2019 amendment by No. 314 added (b)(5).

The 2019 amendment by No. 990 deleted former (b)(2) and redesignated the remaining subdivisions accordingly.

17-93-308. Revocation, suspension, or denial — Grounds.

(a) After due notice and hearing, the Arkansas State Board of Physical Therapy may suspend, revoke, or refuse to issue or renew the license of a person licensed under this chapter, or take other appropriate action against a person licensed under this chapter, who:

(1) Practices as a physical therapist or works as a physical therapist assistant when his or her physical or mental abilities are impaired by the use of a controlled substance or other habit-forming drugs, chemicals, alcohol, or any other causes;

(2) Has been convicted of violating any state or federal narcotics law;

(3) Is, in the judgment of the board, guilty of immoral or unprofessional conduct;

(4) [Repealed.]

(5) Is guilty, in the judgment of the board, of gross negligence in his or her practice;

(6) Has obtained, or attempted to obtain, licensure by fraud or material misrepresentation;

(7) Has been declared insane by a court of competent jurisdiction and has not subsequently been lawfully declared sane;

(8) Has treated, or undertaken to treat, ailments of human beings otherwise than by physical therapy and as authorized by this chapter;

(9)(A) Engages, directly or indirectly, in the division, transferring, assigning, rebating, or refunding of fees received for professional services or gratuity with a physician or healthcare practitioner who referred a patient, or with a relative or business associate of the referring person, without appropriate disclosure to the patient so referred.

(B) This subdivision (a)(9) does not prohibit the members of any regularly and properly organized business entity recognized by Arkansas law and composed of physical therapists from making a division of their total fees among themselves as they determine by contract necessary to defray their joint operating costs.

(C) This subdivision (a)(9) shall not apply to any physical therapist employed by a licensed physician on July 15, 1991, during the term of such employment, nor shall it apply to physical therapy positions on the premises of Arkansas-licensed hospitals and nursing homes;

(10) Attempts to engage in conduct that subverts or undermines the integrity of the examination or the examination process, including without limitation:

(A) Utilizing in any manner recalled or memorized examination questions from or with a person or entity;

(B) Failing to comply with all test center security procedures;

(C) Communicating or attempting to communicate with other examinees during the test; or

(D) Copying or sharing examination questions or portions of questions;

(11) Has had any of the following disciplinary actions taken against him or her by the proper authorities of another state, territory, or country:

(A) A license revoked or suspended; or

(B) An application for licensure refused, revoked, or suspended;

(12)(A) Has been convicted of or pleaded guilty or nolo contendere to a felony in the courts of this state or any other state, territory, or country.

(B) As used in subdivision (a)(12)(A) of this section, "convicted" includes a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, admission of guilt, an Alford plea, or a plea of nolo contendere; and

(13) Is in violation of this chapter or any rule promulgated by the board.

(b) The procedure in all disciplinary actions shall be as prescribed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and shall include the power to subpoena documents and people.

History. Acts 1959, No. 141, § 12; 1979, No. 631, § 7; A.S.A. 1947, § 72-1328; Acts 1991, No. 1011, § 1; 1995, No. 742, § 3; 2001, No. 1412, § 8; 2009, No. 1471, § 8; 2019, No. 315, § 1604; 2019, No. 990, § 94.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a)(13).

The 2019 amendment by No. 990 repealed (a)(4).

17-93-309. Revocation, suspension, or denial — Proceedings.

(a)(1) Any person may file a complaint with the Arkansas State Board of Physical Therapy against any person having a license to practice as a physical therapist or as a physical therapist assistant in

this state charging that person with having violated the provisions of § 17-93-308.

(2) Once a complaint has been received in the board office, the board shall first send an advisory notice to the person allegedly committing the violation informing the person of the complaint and a statement notifying the person that the person must reply to the board.

(3) If the board determines that there is a reasonable belief that the accused may have been guilty of a violation of this chapter or the rules promulgated thereunder, or both, the board shall prepare an order and notice of hearing advising the person of the date for the hearing to be held by the board.

(b) All hearings and appeals shall be conducted in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1959, No. 141, § 13; 1979, No. 631, § 8; A.S.A. 1947, § 72-1329; Acts 2001, No. 1412, § 9; 2019, No. 315, § 1605.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (a)(3).

17-93-311. Civil penalties.

(a) After due notice and hearing, the Arkansas State Board of Physical Therapy is also authorized to levy a civil penalty against any person licensed under the provisions of this chapter after a finding that the person has violated any of the provisions of this chapter or any rules promulgated by the board.

(b) Civil penalties assessed by the board shall be no more than one thousand dollars (\$1,000) per incident.

(c) In addition to any other sanctions authorized by this chapter, the board may impose a civil penalty as provided in this section against any unlicensed person practicing or offering to practice any actions requiring licensure pursuant to the provisions of this chapter.

History. Acts 1995, No. 742, § 4; 2019, No. 315, § 1606.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (a).

17-93-313. Notice of malpractice claim or suit.

(a) Every physical therapist and physical therapist assistant, within ten (10) days after receipt of notification of a claim or a filing of a lawsuit against him or her for malpractice, shall notify the Arkansas State Board of Physical Therapy of the claim or lawsuit.

(b) The board shall prepare and adopt rules as are necessary and proper to assure compliance with this section.

History. Acts 1997, No. 744, § 2; 2019, No. 315, § 1607.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (b).

SUBCHAPTER 4 — ATHLETIC TRAINERS

SECTION.

17-93-402. Definitions.

17-93-403. Penalties.

17-93-406. Powers and duties of the board.

SECTION.

17-93-411. Direction and supervision.

17-93-412. Revocation, suspension, or denial — Grounds.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-93-402. Definitions.

As used in this subchapter:

(1) "Athlete" means an individual who is participating in organized athletic or team activities at the interscholastic, intramural, intercollegiate, or professional level, or sanctioned recreational sports activities;

(2) "Athletic injury or illness" means an injury or illness sustained by the athlete as a result of participation in those organized athletic or team activities which require physical strength, agility, flexibility, range of motion, speed, or stamina, or any comparable injury or illness to an athlete which prevents the person from participating in activities described in subdivision (1) of this section;

(3) "Athletic trainer" means a person licensed by the state to engage in athletic training;

(4) "Athletic training" means the prevention, recognition, evaluation, treatment, and rehabilitation of an athletic injury or illness and the organization and administration of exercise, conditioning, and athletic training programs;

(5) "Clinical setting" means a hospital or outpatient clinic;

(6) "Direct supervision" means supervision of the athletic trainer in a clinical setting by the supervising physical therapist or physician who is readily available for consultation for the care of the athlete and is on the premises;

(7) "Direction" means direction of the athletic trainer in a nonclinical setting by a physician who is readily available for consultation for the care of the athlete but not necessarily on the premises;

(8) "License" means the document issued by the Arkansas State Board of Athletic Training to a qualified person to practice athletic training; and

(9) "Sanctioned recreational sports activities" means any athletic or team activity which requires physical strength, agility, flexibility, range of motion, speed, or stamina and meets one (1) or more of the following:

(A) Has officially designated coaches who have the responsibility for athletic activities of the organization;

(B) Has a regular schedule of practices or workouts which are supervised by the officially designated coaches;

(C) Is an activity generally recognized as having an established schedule of competitive events or exhibitions; and

(D) Has a policy requiring documentation of having passed a preparticipation medical examination conducted by a licensed physician as a condition for participation for the athletic activities of the organization.

History. Acts 1995, No. 1279, § 2; 2001, No. 1124, § 1; 2019, No. 386, § 47; 2021, No. 348, §§ 1, 2.

Amendments. The 2019 amendment repealed former (5).

The 2021 amendment rewrote the definition for "Direct supervision"; and added the definitions for "Clinical setting" and "Direction".

17-93-403. Penalties.

(a) Any person who violates a provision of this subchapter is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment for not less than thirty (30) days nor more than one hundred eighty (180) days, or both.

(b) After notice and hearing, the Arkansas State Board of Athletic Training is also authorized to levy a civil penalty against any person licensed under the provisions of this subchapter after a finding that the person has violated any of the provisions of this subchapter or any rules promulgated by the board.

(c) Civil penalties assessed by the board shall be no more than one thousand dollars (\$1,000) per incident.

(d) In addition to any other sanctions authorized by this subchapter, the board may impose a civil penalty as provided in this section against any unlicensed person practicing or offering to practice any actions requiring licensure pursuant to the provisions of this subchapter.

History. Acts 1995, No. 1279, § 3; 2001, No. 1124, § 9; 2019, No. 315, § 1608.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

17-93-406. Powers and duties of the board.

The Arkansas State Board of Athletic Training shall have the following powers and duties:

(1) To receive and maintain all records of board proceedings;

(2) To adopt minimum curriculum and internship requirements for qualification for an Arkansas athletic trainer's license;

(3) To issue licenses;

(4) To keep a complete record of all licensed athletic trainers, including:

(A) Preparing annually a roster showing the names and addresses of all licensed athletic trainers; and

(B) Making available a copy of such a roster to any person requesting it on payment of a fee as established by the board to cover the cost of the roster;

(5) To adopt rules consistent with this subchapter which are necessary for the performance of its duties, including, but not limited to, the imposing of fees adequate to carry out the purposes of this subchapter;

(6) To collect fees adequate to carry out the purposes of this subchapter;

(7) To keep records of fees collected and costs incurred for operations of the board and licensing of athletic trainers; and

(8) To file an annual report of its activities, including the activities of the board, with the Department of Health.

History. Acts 1995, No. 1279, § 6; 2001, No. 1124, § 4; 2019, No. 315, § 1609; 2019, No. 910, § 4893.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (5).

The 2019 amendment by No. 910 substituted "Department of Health" for "Department of Finance and Administration" in (8).

17-93-411. Direction and supervision.

(a) In a nonclinical setting, an athletic trainer may practice the art and science of athletic training under the direction of a physician licensed by the Arkansas State Medical Board.

(b) The athletic trainer may practice athletic training in a hospital or outpatient clinic under the direct supervision of a physical therapist and upon the referral of a physician licensed in the State of Arkansas or of a physician licensed by the board.

History. Acts 1995, No. 1279, § 8; 2001, No. 1124, § 7; 2021, No. 348, § 3.

Amendments. The 2021 amendment substituted "by the Arkansas State Medi-

cal Board" for "in the State of Arkansas" in (a); and added "or of a physician licensed by the board" in (b).

17-93-412. Revocation, suspension, or denial — Grounds.

(a) The Arkansas State Board of Athletic Training may refuse to issue or renew a license or suspend or revoke a license if an applicant has:

(1) Been convicted of a felony listed under § 17-3-102;

(2) Secured a license under this subchapter by fraud or deceit; or

(3) Violated or conspired to violate this subchapter or rules issued pursuant to this subchapter.

(b)(1) On application, the board may reissue a license to a person whose license has been revoked, but the application may not be made before the expiration of a period of one (1) year after the order of revocation has become final.

(2) Such application shall be made in the manner and form required by the board.

History. Acts 1995, No. 1279, § 12; 2001, No. 1124, § 8; 2019, No. 315, § 1610; 2019, No. 990, § 95.

Amendments. The 2019 amendment by No. 315 deleted “or regulations” following “rules” in (a)(3).

The 2019 amendment by No. 990 substituted “felony listed under § 17-3-102”

for “felony or misdemeanor involving moral turpitude, the record of conviction being conclusive evidence of conviction if the board determines after investigation that the person has not been sufficiently rehabilitated to warrant the public trust” in (a)(1).

SUBCHAPTER 5 — PHYSICAL THERAPY LICENSURE COMPACT

SECTION.

17-93-501. Text of compact.

17-93-502. Administration of compact — Rules.

17-93-503. Disclosure of personal information.

SECTION.

17-93-504. Participation in compact as condition of employment.

17-93-505. Criminal background check.

17-93-501. Text of compact.

The Physical Therapy Licensure Compact is enacted into law and entered into by this state with all states legally joining therein and in the form substantially as follows:

PHYSICAL THERAPY LICENSURE COMPACT

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;
2. Enhance the states' ability to protect the public's health and safety;
3. Encourage the cooperation of member states in regulating multi-state physical therapy practice;
4. Support spouses of relocating military members;
5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

1. "Active Duty Military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. §§ 1209 and 1211.

2. "Adverse Action" means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

3. "Alternative Program" means a non-disciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

5. "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

6. "Data system" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

7. "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

8. "Executive Board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

9. "Home state" means the member state that is the licensee's primary state of residence.

10. "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

11. "Jurisprudence Requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

12. "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

13. "Member state" means a state that has enacted the Compact.

14. "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

15. "Physical therapist" means an individual who is licensed by a state to practice physical therapy.

16. "Physical therapist assistant" means an individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

17. "Physical therapy," "physical therapy practice," and "the practice of physical therapy" mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

18. "Physical Therapy Compact Commission" or "Commission" means the national administrative body whose membership consists of all states that have enacted the Compact.

19. "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. "Remote State" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. "Rule" means a regulation, principle, or directive promulgated by the Commission that has the force of law.

22. "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To participate in the Compact, a state must:

1. Participate fully in the Commission's data system, including using the Commission's unique identifier as defined in rules;

2. Have a mechanism in place for receiving and investigating complaints about licensees;

3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

4. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with Section 3.B.;

5. Comply with the rules of the Commission;

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and

7. Have continuing competence requirements as a condition for license renewal.

B. Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal

Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. § 534 and 42 U.S.C. § 14616.

C. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

D. Member states may charge a fee for granting a compact privilege.

SECTION 4. COMPACT PRIVILEGE

A. To exercise the compact privilege under the terms and provisions of the Compact, the licensee shall:

1. Hold a license in the home state;
2. Have no encumbrance on any state license;
3. Be eligible for a compact privilege in any member state in accordance with Sections 4D, G and H;
4. Have not had any adverse action against any license or compact privilege within the previous 2 years;
5. Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);
6. Pay any applicable fees, including any state fee, for the compact privilege;
7. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and
8. Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

B. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of Section 4.A. to maintain the compact privilege in the remote state.

C. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

D. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

E. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and
2. Two years have elapsed from the date of the adverse action.

F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of Section 4A to obtain a compact privilege in any remote state.

G. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;
 2. All fines have been paid; and
 3. Two years have elapsed from the date of the adverse action.
- H. Once the requirements of Section 4G have been met, the license must meet the requirements in Section 4A to obtain a compact privilege in a remote state.

SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

- A. Home of record;
- B. Permanent Change of Station (PCS); or
- C. State of current residence if it is different than the PCS state or home of record.

SECTION 6. ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

B. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

C. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

D. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

E. A remote state shall have the authority to:

1. Take adverse actions as set forth in Section 4.D. against a licensee's compact privilege in the state;
2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the

service statutes of the state where the witnesses and/or evidence are located; and

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

F. Joint Investigations

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION.

A. The Compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each member state shall have and be limited to one (1) delegate selected by that member state's licensing board.

2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring in the Commission.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;
3. Maintain its financial records in accordance with the bylaws;
4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;
5. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;
6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;
7. Purchase and maintain insurance and bonds;
8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;
9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;
11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;
12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
13. Establish a budget and make expenditures;
14. Borrow money;
15. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;
16. Provide and receive information from, and cooperate with, law enforcement agencies;
17. Establish and elect an Executive Board; and
18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of physical therapy licensure and practice.

D. The Executive Board

The Executive Board shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Board shall be composed of nine members:

- a. Seven voting members who are elected by the Commission from the current membership of the Commission;
- b. One ex-officio, nonvoting member from the recognized national physical therapy professional association; and

- c. One ex-officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.
2. The ex-officio members will be selected by their respective organizations.
3. The Commission may remove any member of the Executive Board as provided in bylaws.
4. The Executive Board shall meet at least annually.
5. The Executive Board shall have the following Duties and responsibilities:

- a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

- b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

- c. Prepare and recommend the budget;

- d. Maintain financial records on behalf of the Commission;

- e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

- f. Establish additional committees as necessary; and

- g. Other duties as provided in rules or bylaws.

E. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 9.

2. The Commission or the Executive Board or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Board or other committees of the Commission must discuss:

- a. Non-compliance of a member state with its obligations under the Compact;

- b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

- c. Current, threatened, or reasonably anticipated litigation;

- d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

- e. Accusing any person of a crime or formally censuring any person;

- f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

- g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

- h. Disclosure of investigative records compiled for law enforcement purposes;

- i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other

committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that

occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 8. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Adverse actions against a license or compact privilege;
4. Non-confidential information related to alternative program participation;
5. Any denial of application for licensure, and the reason(s) for such denial; and
6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

C. Investigative information pertaining to a licensee in any member state will only be available to other party states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

SECTION 9. RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within 4 years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty (30) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons;

2. A state or federal governmental subdivision or agency; or

3. An association having at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

K. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the

revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact,

unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

SECTION 11. DATE OF IMPLEMENTATION OF THE INTER-STATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with

the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 12. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

History. Acts 2019, No. 313, § 1.

17-93-502. Administration of compact — Rules.

(a) The Arkansas State Board of Physical Therapy is the Physical Therapy Licensure Compact administrator for this state.

(b)(1) The board may adopt rules necessary to implement this subchapter.

(2)(A) When adopting the initial rules to implement this subchapter, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(i) On or before January 1, 2020; or

(ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

(B) The board shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020.

(c) The board is not required to adopt the rules of the Physical Therapy Compact Commission.

History. Acts 2019, No. 313, § 1.

17-93-503. Disclosure of personal information.

(a) In reporting information to the coordinated database and reporting system under the Physical Therapy Licensure Compact, the Arkansas State Board of Physical Therapy may disclose personally identifiable information about a physical therapist or physical therapist assistant, including the Social Security number of the individual.

(b) The coordinated database and reporting system shall not share personally identifiable information with a state that is not a party to the compact unless the state agrees to not disclose that information to any other person.

History. Acts 2019, No. 313, § 1.

17-93-504. Participation in compact as condition of employment.

(a) An employer shall not require a physical therapist or a physical therapist assistant to seek licensure through the Physical Therapy Licensure Compact as a condition of initial or continued employment as a physical therapist or physical therapist assistant in this state.

(b) An employer may require that a physical therapist or physical therapist assistant obtain and maintain a license to practice physical therapy in multiple states if the physical therapist or physical therapist assistant is free to obtain and maintain the licenses by any means authorized by the laws of the respective states.

History. Acts 2019, No. 313, § 1.

17-93-505. Criminal background check.

(a) The Arkansas State Board of Physical Therapy shall forward fingerprints of each applicant for licensure to the Division of Arkansas State Police.

(b) The division shall conduct a state and national criminal background check and provide the results of the criminal background check to the board.

(c) The board shall use the results of the criminal background check when making licensure determinations.

(d) Initial licensure under §§ 17-93-303 and 17-93-304 is conditioned upon a criminal background check.

History. Acts 2019, No. 313, § 1.

CHAPTER 95**PHYSICIANS AND SURGEONS****SUBCHAPTER.****1. GENERAL PROVISIONS.****2. ARKANSAS MEDICAL PRACTICES ACT — GENERAL PROVISIONS.**

SUBCHAPTER.

3. ARKANSAS MEDICAL PRACTICES ACT — ARKANSAS STATE MEDICAL BOARD.
4. ARKANSAS MEDICAL PRACTICES ACT — LICENSING.
5. CRITICAL MEDICAL SHORTAGE AREAS.
7. TREATMENT OF CHRONIC INTRACTABLE PAIN.
8. PHYSICIAN ASSISTANT COMMITTEE.
9. ARKANSAS GRADUATE REGISTERED PHYSICIAN ACT.
10. SURGICAL TECHNOLOGISTS.
11. ARKANSAS GENETIC COUNSELOR LICENSURE ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-95-102. Legend drugs — Definitions.
- 17-95-103. Notice of malpractice claims.
- 17-95-104. Hospital's duty to report physician misconduct.
- 17-95-106. Volunteer services by retired physicians and surgeons — Immunity from liability.

SECTION.

- 17-95-107. Credentialing organization — Definitions.
- 17-95-108. Informed consent required for gastric bypass surgery.

17-95-102. Legend drugs — Definitions.

(a) As used in this section, “dispensing physician” means a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., who purchases legend drugs to be dispensed to his or her patients for the patients’ personal use and administration outside the physician’s office.

(b) This section does not apply to physicians who only dispense drugs in injectable form unless they are controlled substances, in which case the section shall fully apply.

(c) The dispensing physician shall:

(1) Personally dispense legend drugs, and the dispensing of such drugs may be delegated;

(2)(A) Keep records of all receipts and distributions of legend drugs.

(B) The records shall be subject to inspection by the proper enforcement authority and shall be readily accessible for inspection and maintained in a central registry; and

(3) Label legend drugs with the following information:

(A) Patient’s name and address;

(B) Prescribing physician’s address and narcotic registry number issued by the United States Drug Enforcement Administration or national provider identification number;

(C) Date of dispensing; and

(D) Directions and cautionary statements, if any, as required by law.

(d)(1) A physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., shall not dispense legend drugs without prior approval by the Arkansas State Medical Board after application to the Arkansas State Medical Board and on the showing of need.

(2) Licensed physicians who were dispensing in the ordinary course of their practice before April 12, 2013, shall be exempt from the requirements of this subsection.

(3) The Arkansas State Medical Board shall determine whether need exists for a physician to dispense a specific legend drug to the physician's patient for a patient's personal use and administration outside of the physician's office based on such information as is necessary for the Arkansas State Medical Board to determine:

(A) The legend drug or drugs that the physician requests to dispense;

(B) The ability of a physician's patient to obtain the legend drug from other medical professionals;

(C) The availability of the legend drug to be prescribed by the physician;

(D) The hours at which the legend drug may be obtained from other medical professionals;

(E) The distance the physician's patient must travel to obtain the legend drug from other medical professionals;

(F) Whether the physician has been investigated by the Arkansas State Medical Board concerning the improper prescribing or use of a legend drug;

(G) Whether the physician has a financial relationship with the manufacturer of a legend drug that would create the appearance of a conflict of interest;

(H) Whether the physician dispensing a legend drug will foster cost containment through improved efficiency and productivity; and

(I) The procedures the physician has implemented to:

(i) Assure compliance with the requirements of subsection (c) of this section;

(ii) Monitor and guard against potential drug interactions;

(iii) Store and safeguard the legend drugs; and

(iv) Comply with the Prescription Drug Monitoring Program Act, § 20-7-601 et seq., concerning the reporting requirements to the Prescription Drug Monitoring Program.

(4) This section does not apply to a prescription for:

(i) A topical medication;

(ii) Naloxone;

(iii) Nicotine replacement therapy products;

(iv) Contraceptives;

(v) Acute care medication; or

(vi) Initial treatment for maintenance medication.

(e)(1) The Arkansas State Medical Board shall enforce the provisions of this section and is authorized and directed to adopt rules to carry out the purpose of this section.

(2) The Arkansas State Medical Board shall adopt rules for physician dispensing that, at minimum, meet the same requirements for dispensing and oversight established by the Arkansas State Board of Pharmacy.

(f) As used in this section:

(1)(A) “Acute care medication” means a legend drug that is not a controlled substance and is prescribed for no more than fourteen (14) days of therapy.

(B) “Acute care medication” includes the following oral medications:

- (i) Medications to treat infections;
- (ii) Anti-inflammatory medications;
- (iii) Antinausea medications;
- (iv) Antihistamines; and
- (v) Cough medications;

(2) “Initial treatment” means the first prescription written for a specific prescription medication intended to initiate therapy on the medication; and

(3) “Maintenance medication” means a legend drug that:

- (A) Is not a controlled substance;
- (B) Is prescribed for no more than thirty (30) days; and
- (C) Is used to treat one (1) of the following medical conditions:
 - (i) Hypertension;
 - (ii) Diabetes mellitus; or
 - (iii) Hypercholesterolemia.

History. Acts 1983, No. 515, §§ 1-4; A.S.A. 1947, §§ 72-638 — 72-641; Acts 1987, No. 190, § 1; 2013, No. 1169, § 1; 2017, No. 284, § 5; 2019, No. 315, § 1611; 2019, No. 651, § 2; 2021, No. 503, § 5.

A.C.R.C. Notes. Acts 2021, No. 503, § 1, provided: “Purpose. It is the purpose of this act to authorize pharmacists in Arkansas to test and screen for health conditions that the Centers for Medicare and Medicaid Services has determined qualify for a waiver under the federal Clinical Laboratory Improvement Amendments of 1988, the federal regulations adopted, or any established screening procedures that can safely be performed by a pharmacist.”

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (e).

The 2019 amendment by No. 651 inserted “nicotine replacement therapy products” in (d)(4).

The 2021 amendment substituted “As used in this section, ‘dispensing physician’ means” for “A dispensing physician is” in (a); substituted “does” for “shall” in (b); deleted “not” following “may” in (c)(1); redesignated (c)(2) as (c)(2)(A) and (c)(2)(B); added “or national provider identification number” at the end of (c)(3)(B); substituted “Arkansas State Medical Board” for “board” in (d)(1), twice in the introductory language of (d)(3), and in (d)(3)(F); rewrote (d)(4); redesignated (e) as (e)(1); substituted “Arkansas State Medical Board” for “board” and “the purpose of this section” for “its purpose” in (e)(1); and added (e)(2) and (f).

17-95-103. Notice of malpractice claims.

(a) Every physician licensed to practice medicine and surgery in the State of Arkansas, within ten (10) days after the receipt or notification of a claim or filing of a lawsuit against him or her charging him or her with medical malpractice, shall notify the Arkansas State Medical Board of the claim or lawsuit. The notice shall be sent by registered letter to the office of the board and upon such forms as may be approved by the board. If the malpractice claim is in the form of a complaint in a

filed lawsuit, a copy of the complaint shall be furnished to the board along with the notification required by this section.

(b) The reports required to be filed by physicians under this section shall be privileged and shall not be open for public inspection except upon order of a court of competent jurisdiction.

(c) The board is authorized and directed to prepare and adopt such rules as are necessary and proper to assure compliance with the provisions of this section.

History. Acts 1975, No. 306, §§ 1-3; **Amendments.** The 2019 amendment A.S.A. 1947, §§ 72-625 — 72-627; Acts substituted “rules” for “regulations” in (c). 2019, No. 315, § 1612.

17-95-104. Hospital’s duty to report physician misconduct.

(a)(1) A hospital licensed by or under the jurisdiction of the State of Arkansas, within sixty (60) days after taking such action as described in this section, shall report in writing to the Arkansas State Medical Board the name of any member of the medical staff or any other physician practicing in the hospital whose hospital privileges have been revoked, limited, or terminated for any cause, including resignation, together with pertinent information relating to the action.

(2) The hospital shall also report any other formal disciplinary action concerning any such physician taken by the hospital upon recommendation of the medical staff relating to professional ethics, medical incompetence, or drug or alcohol abuse.

(b) The filing of a report with the board pursuant to this section, investigation by the board, or any disposition by the board shall not, in and of itself, preclude any action by a hospital or other healthcare facility or professional society comprised primarily of physicians to suspend, restrict, or revoke the privileges or membership of such a physician.

(c) No hospital or employee of a hospital reporting to the board as provided by this section shall be liable in damages to any person for slander, libel, defamation of character, or otherwise because of the report.

(d) Any reports, information, or records received and maintained by the board pursuant to this section, including any such material received or developed by the board during an investigation or hearing, shall be strictly confidential. The board may only disclose any such confidential information:

(1) In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order;

(2) To physician licensing or disciplinary authorities of other jurisdictions or to hospital committees located within or outside this state which are concerned with granting, limiting, or denying a physician’s hospital privileges. The board shall include along with any such disclosure an indication as to whether or not the information has been substantiated; or

(3) Pursuant to an order of a court of competent jurisdiction.

History. Acts 1977, No. 451, §§ 1-4; in (a)(2), deleted “moral turpitude” following A.S.A. 1947, §§ 72-634 — 72-637; Acts 2019, No. 990, § 96. ing “incompetence” and made a stylistic change.

Amendments. The 2019 amendment,

17-95-106. Volunteer services by retired physicians and surgeons — Immunity from liability.

(a) Retired physicians and surgeons who are still licensed to practice medicine by the Arkansas State Medical Board under the laws of the State of Arkansas, and who render medical services voluntarily and without compensation to any person at any free or low-cost medical clinic located in the State of Arkansas and registered by the State Board of Health, which accepts no insurance payments and provides medical services free of charge to persons unable to pay or provides medical services for a nominal fee, shall not be liable for any civil damages for any act or omission resulting from the rendering of such medical services, unless the act or omission was the result of the licensee’s gross negligence or willful misconduct.

(b) The State Board of Health is empowered to adopt such rules as it may determine necessary to provide for the registration of free or low-cost medical clinics under this section. Provided, the rules shall require that each person, patient, or client to whom medical services are provided has been fully informed before any treatment by the physician providing the services or by the staff of the medical clinic of the immunity from civil suit provisions of this section, and has acknowledged that fact in writing on a form approved or designated by the Department of Health.

(c) The State Board of Health and its members, and the department and its agents and employees, are exempt and immune from liability for any claims or damages when performing their duties pursuant to this section.

(d) The provisions of this section shall not affect the Arkansas Volunteer Immunity Act, § 16-6-101 et seq.

History. Acts 1995, No. 844, §§ 1-4; deleted “and regulations” following “rules” 2019, No. 315, § 1613. twice in (b).

Amendments. The 2019 amendment

17-95-107. Credentialing organization — Definitions.

(a) The purpose of this section is to allow the Arkansas State Medical Board to provide information to credentialing organizations.

(b) As used in this section:

(1) “Accrediting organization” means an organization that awards accreditation or certification to hospitals, managed care organizations, or other healthcare organizations, including, but not limited to, The Joint Commission and the National Committee for Quality Assurance;

(2) “Credentialing information” means:

(A) Information regarding a physician's:

(i) Professional training, qualifications, background, practice history, and experience, for example, status of medical license;

(ii) Clinical hospital privileges;

(iii) Status of United States Drug Enforcement Administration certificate;

(iv) Education, training, and board certification;

(v) Work history;

(vi) Current malpractice coverage;

(vii) History of professional liability or malpractice claims;

(viii) Drug or alcohol abuse to the extent permitted by law;

(ix) History of board appearances;

(x) Loss, surrender, restriction, or suspension of license;

(xi) Felony convictions;

(xii) History of loss or limitation of privileges or disciplinary activity;

(xiii) Attestation of the correctness and completeness of the application; and

(xiv) History of Medicare or Medicaid or other sanctions; and

(B) Other objective information typically required by accrediting organizations for the purpose of credentialing physicians;

(3) "Credentialing organization" means a hospital, clinic, or other healthcare organization, managed care organization, insurer, or health maintenance organization;

(4) "Primary source verification procedure" means the procedure used by a credentialing organization to test the accuracy of documents and credentialing information submitted to it by or about a physician who is applying for affiliation or participation with the credentialing organization. This procedure involves the verification of credentials with the originating source of the credentials; and

(5) "Telemedicine physician" means a physician who is physically located at a distant site as defined by the Telemedicine Act, § 17-80-401 et seq., but who uses an electronic medium to perform an act that is part of a patient care service initiated in this state.

(c)(1) All physicians licensed by the board shall submit such credentialing information as the board may request so that the board may verify the information by the primary source verification procedure in order to make the information available to credentialing organizations. If the physician should fail to submit the information as the board requests within a period of thirty (30) days, the failure can result in the suspension of the physician's license to practice medicine in the State of Arkansas after the matter is presented to the full board for a hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) Any credentialing organization shall submit such credentialing information as it has in its possession to the board in order to complete the primary source verification procedure, upon the board's request and upon the board's providing proof that the physician has authorized the

release of the information. The failure of the organization to release the information to the board shall be grounds to have the license to do business in the State of Arkansas suspended upon the board's presenting the proof to the licensing agency of that organization.

(3) Credentialing organizations may utilize credentialing information provided by the board and verified by the primary source verification procedure of the board to evaluate the following:

(A) Granting or denying the application of a physician for affiliation or participation within the organization or its networks;

(B) The quality of services provided by a physician or the physician's competency or qualifications;

(C) Renewal of the affiliation or participation of the physician; and

(D) The type, extent, or conditions of the physician's privileges or participation in the network.

(d)(1)(A) The board shall provide to any credentialing organization any credentialing information the board collects concerning any person licensed by the board if the person authorizes release of the information.

(B) The board shall provide the information within fifteen (15) business days after receipt of the request.

(C) If any person fails or refuses for any reason to authorize release of credentialing information, the requesting credentialing organization shall be entitled on grounds of the refusal to exclude the person from any privileges, contract, or network of the credentialing organization.

(2)(A) The board shall promulgate rules establishing a credentialing information system, and the rules shall indicate the procedures for collection and release of credentialing information under this section.

(B) The rules shall require that before July 1, 2003, the process of recredentialing a physician shall be completed within thirty (30) business days unless circumstances beyond the control of the board make completion of the process within thirty (30) business days impossible or unduly burdensome.

(C) If the credentialing process is not completed within the required time and the board does not provide an adequate explanation for failing to meet the time requirement, the fee for the credentialing process shall be refunded to the credentialing organization, hospital, or other qualified recipient of the fee.

(D) If disagreements arise over a claim that circumstances have made timely completion impossible or unduly burdensome, the disagreement shall be presented to the advisory committee established under subdivision (d)(3) of this section for a recommendation to the board on whether or not to refund the fee and in what amount so that the board may issue an order to refund the fee or deny the request after consideration by the board.

(3) The board shall appoint a ten-member advisory committee to assist with the adoption of policies and rules concerning the credentialing information system. At least six (6) of the ten (10) members of the

advisory committee shall be representatives of credentialing organizations subject to this section, including not fewer than two (2) hospital representatives and not fewer than two (2) insurer or health maintenance organization representatives.

(4) Credentialing information shall not be disclosed to any parties other than the applicable healthcare provider and the credentialing organization and its designated credentialing and appeals, peer review, and quality improvement committees or bodies. Except as permitted in this section, credentialing information shall not be used for any purpose other than review by the board and credentialing organizations of the professional background, competency, qualifications, and credentials or renewal of credentials of a healthcare provider or appeals therefrom, and all such credentialing information shall be exempt from disclosure under the provisions of the Freedom of Information Act of 1967, § 25-19-101 et seq. Credentialing information may be disclosed in the following circumstances:

(A) By the board in disciplinary hearings before the board or in any trial or appeal of the board action or order;

(B) By the board or credentialing organization to any licensing, regulatory, or disciplinary authorities or agencies of the United States or of other states or jurisdictions;

(C) In any legal or regulatory proceeding that:

(i) Is brought by a:

(a) Healthcare provider;

(b) Representative of the healthcare provider or a class thereof;

(c) Local, state, or federal agency or authority; or

(d) Patient or group or class of patients or their authorized representatives or agents; and

(ii) Challenges the actions, omissions, or conduct of the credentialing organization with respect to credentialing of any healthcare provider or the grant or denial of any affiliation or participation of the healthcare provider with or in the credentialing organization or any network thereof; or

(D) By any party when authorized to do so by the healthcare provider to whom the credentialing information relates.

(5) The evaluation and discussion of credentialing information by a credentialing organization shall not be subject to discovery or admissible pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq.

(6) The board may enter into contractual agreements with users of the credentialing information system to define the type and form of information to be provided and to give users assurances of the integrity of the information collected.

(7)(A) The board may charge credentialing organizations a reasonable fee for the use of the credentialing service as established by rule.

(B) The fee shall be set in consultation with the advisory committee and shall be set at such a rate as will reimburse the board, when added to the credentialing assessments collected from physicians, for the cost of maintaining the credentialing information system.

(C) A credentialing organization shall not charge or seek payment of the fee from a physician licensee.

(D) The board's costs may not exceed the fees charged by private vendors with a comparable statewide credentialing service.

(E) The board may assess each physician licensee an amount not to exceed one hundred dollars (\$100) per year to offset the cost of providing the credentialing service.

(e)(1)(A) In lieu of testing credentialing information by its own primary source verification procedure, a credentialing organization may rely upon credentialing information from the board if the board certifies that the information provided by the board has been tested by the board's primary source verification procedure.

(B) The credentialing organization shall be immune from civil suit based on any allegation of wrongdoing or negligence involved in the collection and verification of or reliance upon credentialing information on a healthcare provider if the credentialing organization has utilized the information provided by the board in credentialing a healthcare provider for affiliation or participation with the credentialing organization. However, this does not convey immunity from civil suit to a credentialing organization for any credentialing decision it makes.

(2) Except as provided in subsections (f) and (h) of this section, a credentialing organization shall be precluded hereby from seeking credentialing information from the physician or from sources other than the board if:

(A) The same credentialing information is available from the board;

(B) At the time the credentialing information is requested, the board:

(i) Holds certification by the National Committee for Quality Assurance as a certified credentials verification organization;

(ii) Demonstrates compliance with the principles for credentials verification organizations set forth by The Joint Commission;

(iii) Documents compliance with Department of Health rules applicable to credentialing; and

(iv) Maintains evidence of compliance with the standards referenced in subdivisions (e)(2)(B)(i)-(iii) of this section; and

(C)(i) The board charges fees that comply with subdivision (d)(7) of this section.

(ii) Until the board satisfies each of the foregoing prerequisites, credentialing organizations, in their discretion, may utilize credentialing information obtained from the board, or they may seek other sources for the same credentialing information.

(iii) If at any time the board fails to satisfy any of the certification or compliance standards referenced in this subsection, a credentialing organization is not required to utilize the board to obtain credentialing information during any period in which the board lacks such accreditation or compliance.

(f)(1) Credentialing organizations that utilize the credentialing information system offered by the board shall not attempt to collect duplicate information from individual physicians or originating sources, but nothing in this section shall prevent any credentialing organization from collecting or inquiring about any data not available from or through the board, nor from reporting to or inquiring of the National Practitioner Data Bank.

(2) The board may seek an injunction against any credentialing organization violating or attempting to violate this section and, upon prevailing, shall be entitled to recover attorney's fees and court costs involved in obtaining the injunction.

(g) The board will have the authority to hire such employees and enter into contracts with attorneys, individuals, or corporations for services as may be necessary to bring about the purpose of this section.

(h)(1) If the medical staff bylaws of a credentialing organization require the use of a primary source verification procedure for a telemedicine physician, the credentialing organization may obtain a primary source verification by:

(A) Seeking credentialing information from the board using the process established under this section; or

(B) Using a streamlined process for credentialing and privileging telemedicine practitioners established by the Centers for Medicare & Medicaid Services under 42 C.F.R. § 482.22, as existing on January 1, 2019, if the telemedicine physician has been credentialed by another Arkansas hospital within the past three (3) years.

(2) This section does not require a credentialing organization to use a primary source verification procedure for credentialing a telemedicine physician unless the use of a primary source verification procedure is mandated by the organization's medical staff bylaws.

(3) Solely for purposes of determining the fee to be paid under subdivision (d)(7) of this section, the board shall not classify a physician as a telemedicine physician, regardless of whether the physician is providing telemedicine services for organizations in this state or outside of this state, if:

(A) The physician's practice location is in Arkansas; or

(B) The physician is providing services on-site at the credentialing organization that is seeking credentialing information about the physician.

History. Acts 1999, No. 1410, § 2; 2003, No. 1360, §§ 1-3; 2005, No. 1962, § 76; 2011, No. 999, § 1; 2013, No. 1035, § 2; 2019, No. 315, §§ 1614-1617; 2019, No. 386, § 48; 2019, No. 921, §§ 1-3.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" twice in (d)(2)(A), and in (d)(2)(B) and the first sentence of (d)(3); deleted "and regulation" following "rule" in

(d)(7)(A); and deleted "and regulations" following "rules" in (e)(2)(B)(iii).

The 2019 amendment by No. 386 repealed former (b)(2).

The 2019 amendment by No. 921 added (b)(6) [now (b)(5)]; substituted "Except as provided in subsections (f) and (h) of this section" for "Subject only to the exceptions recognized in subdivisions (f)(1) and (2) of this section" in (e)(2); added the (e)(2)(C)(i)

and (e)(2)(C)(ii) designations; deleted organization is not required" for "no credentialing organization shall be required" following "Until" in (e)(2)(C)(iii); substituted "a credentialing in (e)(2)(C)(iii); and added (h).

17-95-108. Informed consent required for gastric bypass surgery.

(a) No gastric bypass surgery may be performed in this state unless the physician who will perform the surgery has informed the patient in writing, as evidenced by the patient's signature, of the known risks and complications of the procedure, including, but not limited to:

- (1) The surgery itself;
- (2) All known and documented future complications that may occur as a result of the procedure;
- (3) Side effects that may result from vitamin deficiency and malnutrition; and
- (4) The requirements for appropriate follow up.

(b)(1) The Arkansas State Medical Board shall promulgate rules to enforce this section within six (6) months of July 16, 2003.

(2) The rules shall utilize scientifically accepted information from national medical specialty boards, organizations, or governmental agencies in determining the specific content and lists of complications or side effects, or both, that must be included in the informed consent.

History. Acts 2003, No. 1356, § 1; deleted "and regulations" following "rules" 2019, No. 315, § 1618. in (b)(1) and (b)(2).

Amendments. The 2019 amendment

SUBCHAPTER 2 — ARKANSAS MEDICAL PRACTICES ACT — GENERAL PROVISIONS

SECTION.

17-95-202. Definitions.

17-95-206. Out-of-state physicians.

17-95-202. Definitions.

As used in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.:

(1) "Active" means actively engaged in the full-time practice of medicine;

(2) "Office-based surgery" means surgery that:

(A) Is performed by a physician in a medical office that is not a hospital, outpatient clinic, or other facility licensed by the State Board of Health;

(B) Requires the use of general or intravenous anesthetics; and

(C) In the opinion of the physician, does not require hospitalization; and

(3) "Practice of medicine" means:

(A) Holding out oneself to the public within this state as being able to diagnose, treat, prescribe for, palliate, or prevent any human

History. Acts 1997, No. 1353, § 1; 2019, No. 315, § 1619; 2019, No. 688, § 1.

Amendments. The 2019 amendment by No. 315 substituted “rules promulgated” for “regulation” in the first sentence of the introductory language; and substituted “rule” for “regulation” in (6).

The 2019 amendment by No. 688 added the (a) and (b) designations; deleted “denial or” preceding “approval” in (b)(3); and substituted “rule” for “regulation” in (b)(6).

SUBCHAPTER 3 — ARKANSAS MEDICAL PRACTICES ACT — ARKANSAS STATE MEDICAL BOARD

SECTION.

17-95-301. Creation — Members.

17-95-302. Organization and proceedings.

17-95-303. Powers and duties.

17-95-304. Inspectors — Use of prescriptions, orders, or records.

SECTION.

17-95-305. Disposition of funds.

17-95-307. License eligibility.

17-95-310. [Repealed.]

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-95-301. Creation — Members.

(a) There is created the Arkansas State Medical Board.

(b)(1)(A) The board shall consist of fifteen (15) members appointed by the Governor for terms of six (6) years.

(B) The Governor shall consider diversity of practice specialties and geographical areas of practice in making appointments to the board.

(2)(A)(i) Ten (10) members shall be qualified, licensed, and active medical practitioners appointed by the Governor after the Governor has consulted the Arkansas Medical Society, Inc., and shall be subject to confirmation by the Senate.

(ii) At least two (2) members shall be appointed from each of the state’s four (4) congressional districts.

(iii) Two (2) members shall be appointed at large.

(B) Congressional district representation required under this subdivision (b)(2) shall be achieved by appointment as vacancies occur.

(3) One (1) member shall be a licensed practicing physician in this state and shall be appointed by the Governor after the Governor has consulted the Physicians' Section of the Arkansas Medical, Dental, and Pharmaceutical Association, Inc., and shall be subject to confirmation by the Senate.

(4)(A) Two (2) members of the board shall not be actively engaged in or retired from the practice of medicine.

(B) One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly.

(C) Both shall be appointed from the state at large subject to confirmation by the Senate.

(D) The two (2) positions may not be held by the same person.

(E) Both shall be full voting members but shall not participate in the grading of examinations.

(5) One (1) member shall be a qualified, licensed, and practicing osteopathic physician appointed after consulting the Arkansas Osteopathic Medical Association and shall be subject to confirmation by the Senate.

(6) One (1) member shall be a qualified, licensed, and practicing physician assistant appointed by the Governor after the Governor has consulted with the Arkansas Academy of Physician Assistants, Inc., and shall be subject to confirmation by the Senate.

(c)(1) The term of each member shall expire on December 31 of the year designated, and a successor appointee shall be named by the Governor on or before the expiration date of the term so expiring.

(2) A member may not serve on the board for more than two (2) full terms or more than thirteen (13) years.

(d)(1) Vacancies on the board occurring otherwise than as provided in this section shall be filled by appointment by the Governor within thirty (30) days thereafter.

(2) In the event a vacancy exists in the member position of licensed practicing physician appointed upon the advice and recommendation of the Arkansas Medical Society, Inc., due to death, resignation, or other cause, a successor member to the position shall be appointed by the Governor for the remainder of the unexpired portion of the term thereof in the same manner as provided in this section for the initial appointment.

(3) In the event a vacancy exists in the member position of licensed practicing physician appointed upon the advice and recommendation of the Physicians' Section of the Arkansas Medical, Dental, and Pharmaceutical Association, Inc., due to death, resignation, or other cause, a successor member to the position shall be appointed by the Governor for the remainder of the unexpired portion of the term thereof in the same manner as provided in this section for the initial appointment.

(4) In the event a vacancy exists in the member position of the licensed osteopathic physician appointed upon the advice and recommendation of the Arkansas Osteopathic Medical Association due to

death, resignation, or other cause, a successor member to the position shall be appointed by the Governor for the remainder of the unexpired portion of the term thereof in the same manner as provided in this subchapter for the initial appointment.

(5) In the event that a vacancy exists in the position of the licensed physician assistant appointed under subsection (b) of this section due to death, resignation, or other causes, a successor to the position shall be appointed by the Governor for the remainder of the term of the licensed physician assistant in the same manner as provided in this subchapter for the initial appointment.

(e) The members of the board shall take the oath prescribed by the Arkansas Constitution for state officers before entering upon the discharge of their duties.

(f)(1) The members of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(2) The Director of the Arkansas State Medical Board and the Deputy Director of the Arkansas State Medical Board shall receive such additional salary as may be fixed by the Department of Health.

(g) Physicians appointed to the board shall:

(1) Remain in active practice for the full term of the appointment; or

(2) Resign if, with more than one (1) year remaining on the appointed term, the physician:

(A) Is no longer actively practicing as a physician; or

(B) Moves his or her business or residence out of the district from which he or she was appointed.

(h)(1) Members of the board may be removed from the office by the Governor:

(A) For good cause pursuant to § 25-16-804;

(B) For cause including dishonorable or unprofessional conduct, abuse of authority, malfeasance, misfeasance, or nonfeasance; or

(C)(i) For any reason that would justify probation, suspension, or revocation of a physician's license to practice medicine under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., or for any reason that would justify probation, suspension, or revocation of a physician assistant's license to practice under § 17-105-101 et seq., which shall be referred directly to the Division of Pharmacy Services and Drug Control of the Department of Health by the Governor for investigation as provided in § 17-80-106.

(ii) The Division of Pharmacy Services and Drug Control of the Department of Health shall prepare a report for the Secretary of the Department of Health based on its findings.

(2) No member of the board may be involved in the conduct of the investigation except to cooperate with the investigation as required by the investigator.

(i) A physician assistant appointed to the board shall:

(1) Remain in active practice for the full term of the appointment; or

(2) Resign if, with more than one (1) year remaining of the appointed term, the physician assistant is no longer actively practicing as a physician assistant.

History. Acts 1955, No. 65, § 2; 1957, No. 198, § 18; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1983, No. 365, § 5; 1985, No. 850, § 1; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 72-602, 72-602.1, 72-618; Acts 1991, No. 255, §§ 1, 2; 1992 (1st Ex. Sess.), No. 38, § 1; 1997, No. 250, § 166; 2001, No. 464, §§ 2, 3; 2005, No. 2010, §§ 2-4; 2009, No. 1273, § 1; 2015, No. 1100, § 37; 2017, No. 69, § 1; 2019, No. 386, § 50; 2019, No. 910, §§ 4894, 4895; 2021, No. 634, §§ 1-4.

A.C.R.C. Notes. Acts 2021, No. 634, § 1 omitted a previously existing word from the text in amending § 17-95-301(b)(3). A.C.R.C. staff has determined that the omitted word was not intended to be dropped from the text and § 17-95-301 should be set out above to reflect that intent.

Amendments. The 2019 amendment

by No. 386 deleted the (c)(2)(A) designation; substituted “A member may not serve” for “No member may serve” in (c)(2); and deleted (c)(2)(B).

The 2019 amendment by No. 910, in (f)(2), deleted “Executive” preceding “Director” and substituted “Department of Health” for “board”; and substituted “Secretary of the Department of Health” for “Governor” in (h)(1)(C)(ii).

The 2021 amendment substituted “fifteen (15) members” for “fourteen (14) members” in (b)(1)(A); substituted “after the Governor has consulted” for “after consulting” in (b)(2)(A)(i) and (b)(3); added the designations within (b)(4); added (b)(6) and (d)(5); inserted “or for any reason that would justify probation, suspension, or revocation of a physician assistant’s license to practice under § 17-105-101 et seq.” in (h)(1)(C)(i); added (i); and made stylistic changes.

17-95-302. Organization and proceedings.

(a) Within thirty (30) days after their appointment, the members of the Arkansas State Medical Board shall meet and organize by electing a chair, vice chair, and treasurer. The Treasurer of the Arkansas State Medical Board shall give bond in such amount as may be designated by the board, which may be increased or decreased from time to time, conditioned for the faithful disbursement and accounting of all moneys coming into his or her hands as the treasurer.

(b) The board shall hold its regular meetings at such time as the board shall establish by rule and shall have the power to call and hold special meetings at such times and places as it deems necessary.

(c) The Chair of the Arkansas State Medical Board, the Vice Chair of the Arkansas State Medical Board, and the Secretary of the Arkansas State Medical Board shall have power to administer oaths for the purpose of performing their powers and duties.

(d) The board shall have a seal bearing the name “Arkansas State Medical Board”.

History. Acts 1955, No. 65, § 2; 1979, No. 150, § 1; A.S.A. 1947, § 72-602; Acts 2019, No. 315, § 1620.

Amendments. The 2019 amendment substituted “rule” for “regulation” in (b).

17-95-303. Powers and duties.

The Arkansas State Medical Board shall:

(1) Make and adopt all rules and bylaws not inconsistent with the laws of this state or of the United States and necessary or convenient to perform the duties and to transact the business required by law;

(2) Have authority to promulgate and put into effect such rules as are necessary to carry out the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and the intentions expressed therein;

(3)(A)(i) Have authority to request the Department of Health to employ attorneys to represent the board in all legal matters for a compensation approved by the board.

(ii) Contracts for employment of attorneys shall be filed by the Secretary of the Department of Health with the Legislative Council.

(B) The board shall have authority to request the assistance of the Attorney General and the prosecuting attorneys of Arkansas in such manner as it deems necessary and proper;

(4) Have the authority to employ a director in consultation with the secretary to carry out the purposes and the mandates of the board;

(5) Examine, as is provided for by law, all applicants for a license to practice medicine in this state;

(6) Consider and give deference to data, studies, consensus documents, and conclusions issued by the Centers for Disease Control and Prevention or the National Institutes of Health whenever their data, studies, consensus documents, and conclusions are relevant to any decision made pursuant to the board's powers and duties under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.;

(7) Have the power and authority to collect practice data from licensees; and

(8) Promulgate rules limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board.

History. Acts 1955, No. 65, § 2; 1957, No. 198, § 18; 1977, No. 15, § 4; 1979, No. 150, § 1; 1983, No. 365, § 5; A.S.A. 1947, §§ 72-602, 72-618; Acts 1992 (1st Ex. Sess.), No. 38, § 2; 2001, No. 464, § 4; 2003, No. 1716, § 1; 2011, No. 1010, § 1; 2017, No. 69, § 2; 2017, No. 820, § 5; 2019, No. 315, § 1621; 2019, No. 910, § 4896.

Amendments. The 2019 amendment by No. 315 deleted "regulations" following "rules" in (1); and deleted "and regulations" following "rules" in (2).

The 2019 amendment by No. 910 deleted "regulations" following "rules" in (1);

deleted "and regulations" following "such rules" in (2); in (3)(A), inserted "request the Department of Health" in (i), and substituted "Secretary of the Department of Health" for "Executive Director of the Arkansas State Medical Board" in (ii); rewrote (4), which formerly read: "Have the authority to employ an executive director and a deputy director to carry out the purposes and the mandates of the board and to supervise the other employees of the board"; deleted former (5)-(7); and redesignated former (8)-(11) as present (5)-(7).

17-95-304. Inspectors — Use of prescriptions, orders, or records.

(a)(1) The Arkansas State Medical Board shall utilize the investigators and inspectors of the Division of Pharmacy Services and Drug Control of the Department of Health.

(2) The Department of Health is directed to make investigators and inspectors available for those purposes for as long as they may conduct investigations and inspections of prescriptions.

(b)(1)(A) The investigators may obtain copies of prescriptions, orders, and records as admissible evidence without the necessity of the issuance of an administrative inspection warrant or search warrant.

(B) However, investigators must have in their possession an authorization by the Director of the Division of Pharmacy Services and Drug Control of the Department of Health.

(2) The inspectors shall have the duty and authority upon written direction by the Director of the Arkansas State Medical Board to investigate, inspect, and make copies of the records, orders, and prescriptions, wherever located, of all persons licensed by the board in order to determine whether or not the persons have:

(A) Violated the laws of the State of Arkansas or of the United States respecting the prescription and use of narcotics and potentially dangerous drugs;

(B) Practiced their profession in such a way as to endanger the general health and welfare of the public; or

(C) Violated the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(3) The licensee may refuse the request of the investigator and not tender copies of the records.

(c)(1) The copies of prescriptions, orders, or records shall not become public records by reason of their use in disciplinary proceedings held by the board, nor shall the patient's or physician's property right to the prescriptions be extinguished by that use.

(2)(A) If the prescriptions, orders, or records are to be used in criminal proceedings, they shall be obtained by the inspectors only on an administrative inspection warrant as authorized by § 5-64-502.

(B) However, no administrative inspection warrant is necessary when the prescriptions, orders, or records are to be used solely for board disciplinary purposes.

(d) The board shall have the power, in lieu of a letter of authority, to issue to the investigators a subpoena to obtain copies of the records referred to in this section, and the investigators will have the authority to serve the subpoena and to collect the records.

(e) If a witness served with a subpoena fails to honor the subpoena, then the board may apply to the circuit court for remedies as provided in the Arkansas Rules of Civil Procedure. The court shall have the power to punish the disobedient witness for contempt as is now provided by law in the trial of civil cases.

(f)(1) The division shall have the authority to collect from the individual board utilizing the services delineated in this section up to

fifty dollars (\$50.00) per hour with a maximum of four thousand dollars (\$4,000) in hourly costs per case.

(2) The division shall also have the authority to collect from the individual board utilizing the services delineated in this section for:

(A) Travel expenses at the level for state employees; and

(B) Other out-of-pocket costs incurred by the division in carrying out its investigative task.

(g) The board may collect costs incurred under subsection (f) of this section from the licensees being investigated by the division.

History. Acts 1955, No. 65, § 2; 1979, No. 150, § 1; A.S.A. 1947, § 72-602; Acts 1997, No. 493, § 2; 2005, No. 1410, § 2; 2017, No. 69, § 3; 2019, No. 910, §§ 4897, 4898.

Amendments. The 2019 amendment deleted “as its employees” following “shall utilize” in (a)(1); and deleted “Executive” preceding “Director” in the introductory language in (b)(2).

17-95-305. Disposition of funds.

(a) All funds received by the Arkansas State Medical Board shall be expended in furtherance of the purposes of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq. This includes, but is not specifically limited to, the publication of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., preparing and publishing a compilation of physicians, investigating violations of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., instituting actions to compel compliance with the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., defending actions brought against it as a result of its actions under the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and for such other purposes not inconsistent with the general purposes of the creation of the board as may be directed by the board.

(b)(1) All moneys received by the board shall be disbursed by the Chair of the Arkansas State Medical Board or the Director of the Arkansas State Medical Board.

(2) The board shall furnish a surety bond and shall keep a true and faithful account of all moneys received and all moneys expended.

(3) The chair shall file annually with the Secretary of the Department of Health a report of all financial transactions duly audited by an independent accountant.

(c) Any surplus in the treasury of the board at the end of the year shall remain in the treasury and may be expended in succeeding years for the purposes set out in this section.

(d) It shall not be lawful for the board or for any member thereof in any manner whatsoever or for any purpose to charge or obligate the State of Arkansas for payment of any money whatsoever.

History. Acts 1957, No. 198, § 18; 1983, No. 365, § 5; A.S.A. 1947, § 72-618; Acts 1992 (1st Ex. Sess.), No. 38, § 3; 2005, No. 495, § 1; 2017, No. 69, § 4; 2019, No. 910, § 4899.

Amendments. The 2019 amendment, in (b), substituted “The board” for “The

chair or the executive director, or both” in (2), and substituted “The chair shall file annually with the Secretary of the Department of Health” for “The executive director shall file annually with the Governor” in (3).

17-95-307. License eligibility.

A person is not eligible to receive or hold a license to practice medicine or another healthcare profession issued by the Arkansas State Medical Board if the person has pleaded guilty or nolo contendere to or has been found guilty of a felony listed under § 17-3-102.

History. Acts 2005, No. 1249, § 1; 2019, No. 990, § 97.

Amendments. The 2019 amendment substituted “A person is not eligible” for “No person shall be eligible”, deleted “either an infamous crime that would impact

his or her ability to practice medicine in the State of Arkansas or” following “guilty of”, and substituted “felony listed under § 17-3-102” for “felony, regardless of whether the conviction has been sealed, expunged, or pardoned”.

17-95-310. [Repealed.]

Publisher’s Notes. This section, concerning the qualifications of the Medical Director of Arkansas State Medical Board,

was repealed by Acts 2019, No. 910, § 4900, effective July 1, 2019. The section was derived from Acts 2007, No. 1210, § 5.

SUBCHAPTER 4 — ARKANSAS MEDICAL PRACTICES ACT — LICENSING

SECTION.

- 17-95-403. Application — Qualifications.
- 17-95-404. Examinations.
- 17-95-405. Credentials.
- 17-95-406. Temporary permits.
- 17-95-407. [Repealed.]
- 17-95-408. Annual registration.
- 17-95-409. Denial, suspension, or revocation — Grounds — Definition.
- 17-95-410. Denial, suspension, or revocation — Proceedings.

SECTION.

- 17-95-411. Fees.
- 17-95-412. Academic licenses.
- 17-95-413. Nonparticipation in maintenance of licensure or maintenance of certification — Definitions.
- 17-95-414. Multiyear license or registration for physicians.

Effective Dates. Acts 2019, No. 267, § 2: Mar. 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that in this state the granting of medical licensure to foreign medical graduates is being delayed due to foreign medical graduates having a medical fellowship instead of a medical internship or residency; that a medical fellowship is a period of medical training similar to an

internship or residency; that this act would authorize the Arkansas State Medical Board to accept and license foreign medical graduates with fellowships without unnecessary delay; that there is a shortage of physicians in certain areas of the State of Arkansas and that the passage of this act will make more physicians available for practice in the State of Arkansas, which is highly desirable for the health care of the citizens of the State of

Arkansas; and that this act is immediately necessary to ensure that graduates of foreign medical schools who have medical fellowships are able to obtain medical licensure when they complete their medical fellowships in the spring of 2019 and to make more physician available for the practice of medicine in this state to improve the health of the citizens of the State of Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is

found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-95-401. License required.

CASE NOTES

Public Policy.

Circuit court properly granted a staffing agency summary judgment on its counterclaim against a doctor for breach of contract for failing to return the \$30,000 signing bonus when he was terminated because the doctor failed to demonstrate that the staffing agency breached the agreement first by terminating him in retaliation for his objections to a hospital’s use of nurse-initiated order sets; even assuming the doctor could bring such a claim as an independent contractor, and

he could not, the doctor did not establish that the hospital’s use of nurse-initiated order sets violated the public policy against the unlicensed practice of medicine and he could not extrapolate such a policy from this section. Moreover, the evidence demonstrated that the doctor’s unacceptable conduct was the reason for his termination, and not his objections to nurse-initiated order sets. *Johnson v. Pope Emergency Grp., LLC*, 2019 Ark. App. 544, 589 S.W.3d 462 (2019).

17-95-403. Application — Qualifications.

(a)(1) Every person desiring a license to practice medicine shall make application to the Arkansas State Medical Board. The application shall be verified by oath and shall be in such form as shall be prescribed by the Arkansas State Medical Board.

(2) The application shall be accompanied by the license fee and such documents, affidavits, and certificates as are necessary to establish that the applicant possesses the qualifications prescribed by this section, apart from any required examination by the Arkansas State Medical Board.

(3) The burden of proof shall be upon the applicant, but the Arkansas State Medical Board may make such independent investigation as it may deem advisable to determine whether the applicant possesses the qualifications and whether the applicant has at any time committed any of the acts or offenses herein defined as unprofessional conduct.

(b) No person shall be granted a license to practice medicine in the State of Arkansas unless he or she:

(1) Is at least twenty-one (21) years of age;

(2) Has not been guilty of acts constituting unprofessional conduct as defined in § 17-95-409;

(3)(A) Is a graduate of:

(i) A recognized United States or Canadian medical school whose entrance requirements and course of instruction have been approved by the Council on Medical Education of the American Medical Association;

(ii) A Canadian eclectic medical school which has been approved by the Council on Medical Education of the National Eclectic Medical Association; or

(iii)(a) A foreign medical school whose entrance requirements and course of instruction have been approved by the Arkansas State Medical Board.

(b) He or she must also have:

(1) Served three (3) years as an intern, resident, or fellow, or a combination thereof, in an accredited postgraduate medical education program in the United States;

(2) Served three (3) years as an intern or resident in a postgraduate medical education program outside the United States, completed all steps of the United States Medical Licensing Examination, obtained Educational Commission for Foreign Medical Graduates certification, and either completed one (1) year or more of fellowship training accredited by the Accreditation Council for Graduate Medical Education in the United States or received American Board of Medical Specialties certification by the American Board of Medical Specialties; or

(3) Completed one (1) year as an intern or resident in an accredited postgraduate medical education program in the United States and be currently enrolled in an accredited postgraduate medical program in Arkansas.

(B) However, the Arkansas State Medical Board at such time as it deems expedient may require of every applicant for licensure:

(i) A properly verified certificate that he or she has served one (1) year of internship in a general accredited hospital; or

(ii) A certificate of his or her service in an accredited postgraduate medical education program as described in subdivision (b)(3)(A)(iii)(b) of this section; and

(4) Has successfully passed an examination approved by the Arkansas State Medical Board as set forth in its rules.

History. Acts 1957, No. 198, §§ 5, 6; 1971, No. 178, § 1; 1977, No. 199, § 1; A.S.A. 1947, §§ 72-605, 72-606; Acts 1992 (1st Ex. Sess.), No. 45, § 1; 1993, No. 1219, § 22; 2005, No. 498, § 1; 2013, No. 549, § 1; 2019, No. 267, § 1; 2019, No. 990, § 98.

Amendments. The 2019 amendment by No. 267 inserted “fellow, or a combina-

tion thereof” in (b)(3)(A)(iii)(b)(1); inserted “and either” and substituted “or” for “and” preceding “received” in (b)(3)(A)(iii)(b)(2); and made stylistic changes.

The 2019 amendment by No. 990 substituted “Has not been guilty” for “Is of good moral character and has not been guilty” in (b)(2).

RESEARCH REFERENCES

ALR. Use of Planned Parenthood v. Casey’s “Large-Fraction” Test in Review of Abortion Regulations. 38 A.L.R.7th Art. 6 (2019).

17-95-404. Examinations.

(a) The Arkansas State Medical Board by and through its rules will approve and designate the examinations to be given to those individuals who desire a license to practice medicine in the State of Arkansas. The board will further set forth the standards by rule for successful completion of the examination for licensure.

(b) Examinations for a license to practice medicine shall be held not fewer than one (1) time in each year at such times and places as may be specified by the board.

(c) If in the opinion of the board the applicant possesses the necessary qualifications, the board shall issue to him or her a certificate.

(d) If an applicant fails to meet the minimum grade requirements in his or her examination, he or she may be reexamined upon a filing of a new application and the payment of a required fee.

History. Acts 1957, No. 198, § 8; A.S.A. 1947, § 72-608; Acts 1992 (1st Ex. Sess.), No. 45, § 2; 1999, No. 490, § 1; 2005, No. 495, § 2; 2019, No. 315, § 1622.

Amendments. The 2019 amendment, in (a), deleted “and regulations” following “rules” and deleted “and regulation” following “rule”.

17-95-405. Credentials.

(a) A legally licensed physician and surgeon who has been issued a license to practice medicine in another state where the requirements for licensure are equal to those established by the State of Arkansas may be permitted by the Arkansas State Medical Board to practice his or her profession in this state without taking an examination upon payment of a fee as provided in § 17-95-411.

(b) The issuance of a license by credentials by the board shall be at the sole discretion of the board, and the board may provide such rules governing such an admission as may be deemed necessary by or desirable to the board.

History. Acts 1957, No. 198, § 9; 1977, No. 199, § 2; A.S.A. 1947, § 72-609; Acts 1993, No. 276, § 1; 2019, No. 315, § 1623.

Amendments. The 2019 amendment deleted “or regulations” following “rules” in (b).

17-95-406. Temporary permits.

(a) In cases of emergency and to prevent hardship, the Director of the Arkansas State Medical Board may issue a temporary permit to practice medicine upon payment of the fee required for applicants after satisfying himself or herself that the applicant has all the qualifications and meets all the requirements of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq. A temporary permit shall be valid only until the next meeting of the Arkansas State Medical Board and shall expire at that time.

(b)(1) The board shall issue a temporary permit to practice medicine to any medical doctor licensed and qualified to practice medicine in the Philippines, a former possession of the United States, provided that the temporary permit issued shall authorize the person to practice medicine in this state only under the supervision of a duly licensed and qualified physician in this state.

(2) The temporary permit shall be for a period of not more than two (2) years. If at the end of the two (2) years the person to whom a temporary permit has been issued has not met the qualifications and has not passed the prescribed examinations for licensure to practice medicine in this state as provided in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., it shall be unlawful for the board to grant an extension of or to issue a new temporary permit to that person.

(3) Nothing in this subsection shall prohibit the board from suspending or revoking the temporary permit of any person to whom a temporary permit is issued under the provisions of this subsection on any grounds which by law and rule would be grounds to revoke or suspend the license of a person licensed to practice medicine in this state, or for such periods of time as the person to whom the temporary permit is issued is not under the supervision of a licensed and qualified physician in this state.

(4) As used in this subsection, a person shall be deemed to be under the supervision of a licensed and qualified physician of this state when the physician shall notify the board in writing of his or her supervision of the medical practice of the person to whom the temporary permit is issued. It shall not be necessary that the person practice medicine out of the same office or in the same city or town in which the supervisory physician practices or resides.

History. Acts 1957, No. 198, § 10; 1971, No. 472, § 1; A.S.A. 1947, § 72-610; Acts 2019, No. 315, § 1624.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (b)(3).

17-95-407. [Repealed.]

Publisher's Notes. This section, concerning the recording of a certificate, was repealed by Acts 2019, No. 266, § 1, effective

July 24, 2019. The section was derived from Acts 1957, No. 198, § 12; A.S.A. 1947, § 72-612.

17-95-408. Annual registration.

(a) The annual license or reregistration fee of a physician licensed by the Arkansas State Medical Board to practice medicine in the State of Arkansas shall be paid before or during the birth month of the license holder beginning in 1998, and each year thereafter. During the implementation year of 1998, fees shall be prorated.

(b) Failure to pay the annual reregistration fee as provided in this section by the last day of the birth month of the license holder shall cause the license to practice medicine in the State of Arkansas of any person so failing to pay the reregistration fee to expire automatically.

(c) Any delinquent licentiate may be reinstated by paying all delinquent fees and a penalty of fifty dollars (\$50.00) for each year or part thereof that he or she has been delinquent.

(d)(1) If any licentiate fails for three (3) consecutive years to pay the reregistration fee, it shall be the duty of the board, without hearing or notice, to cancel and revoke his or her license, subject to reinstatement.

(2) If application for reinstatement is made, the board shall consider the professional qualifications of the applicant upon notice and hearing before ordering reinstatement. Unless such a showing shall thereupon be made to the board as would entitle the applicant to the issuance of an original license, reinstatement shall be denied.

(3) The applicant for reinstatement shall file a written application and pay the same fees required for the issuance of an original license.

(e) Any person practicing his or her profession while his or her license is suspended or after it has been canceled pursuant to this section shall be subject to the penalties prescribed by law.

History. Acts 1957, No. 198, §§ 15-17; 1983, No. 334, § 2; 1985, No. 890, § 2; A.S.A. 1947, §§ 72-615 — 72-617; Acts 1993, No. 275, § 1; 1997, No. 313, § 2; 2005, No. 495, § 3; 2019, No. 990, § 99.

Amendments. The 2019 amendment deleted “moral character and” preceding “professional” in the first sentence of (d)(2).

17-95-409. Denial, suspension, or revocation — Grounds — Definition.

(a)(1) The Arkansas State Medical Board may revoke an existing license, impose penalties as listed in § 17-95-410, or refuse to issue a license in the event the holder or applicant, as the case may be, has committed any of the acts or offenses defined in this section to be unprofessional conduct.

(2) The words “unprofessional conduct”, as used in the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., mean:

(A)(i) Conviction of a felony listed under § 17-3-102.

(ii) The judgment of any such conviction, unless pending upon appeal, shall be conclusive evidence of unprofessional conduct;

(B) Resorting to fraud, misrepresentation, or deception in applying for or securing a license to practice medicine, in taking the examination for the license, or in seeking a renewal of a license;

(C) Aiding or abetting an unlicensed person to practice medicine;

(D) Procuring or aiding or abetting in procuring a wrongful and criminal abortion;

(E) Violation of the laws of the United States or the State of Arkansas regulating the possession, distribution, or use of narcotic or controlled drugs classed in Schedules I-V of the Controlled Substances Act of 1970 or the Uniform Controlled Substances Act, § 5-64-101 et seq., including any amendments thereto;

(F) Habitual indulgence in the use of alcohol to such an extent as to render himself or herself incapable of exercising that degree of skill and judgment in the treatment of his or her patients which the moral trust and confidence in him or her demands;

(G) Grossly negligent or ignorant malpractice;

(H) Habitual, intemperate, or excessive use of narcotics or of any other habit-forming drugs;

(I) Representing to a patient that a manifestly incurable condition of sickness, disease, or injury can be permanently cured;

(J) Becoming physically or mentally incompetent to practice medicine to such an extent as to endanger the public;

(K) Insanity or mental disease, if evidenced by an adjudication or by voluntary commitment to an institution for treatment of a mental disease or as determined by an examination conducted by three (3) impartial psychiatrists retained by the Arkansas State Medical Board;

(L) Soliciting for patronage; advertising for patronage in a false, fraudulent, deceptive, or misleading manner; advertising the quality of medical services; or advertising illegal procedures and practices;

(M) Offering, undertaking, attempting, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine or representing, directly or indirectly, that he or she can treat, operate on, or prescribe for any human condition by a method, means, or procedure which he or she refuses to divulge upon demand to the Arkansas State Medical Board;

(N) The willful betraying of a professional secret;

(O) Persistent and flagrant overcharging or overtreating of patients;

(P) Violating a rule of the Arkansas State Medical Board;

(Q) Violating a term of probation or an order previously imposed by the Arkansas State Medical Board;

(R) Having been found in violation of a statute or a rule governing the practice of medicine by a medical licensing authority or agency of another state; and

(S) Committing an ethical violation as determined by the Arkansas State Medical Board by rule.

(b)(1)(A) Upon receipt of a final order from another agency of the State of Arkansas or a final order from a court of this state after all

appeal rights have been exhausted that finds a physician licensed to practice medicine in this state has breached the loan contract entered into by the physician under § 6-81-701 et seq., the Arkansas State Medical Board may suspend the license of that physician.

(B) The suspension shall be for a period of years equivalent to the number of years that the recipient is obligated to practice medicine in a rural area but has not so practiced and until the loan with interest together with any civil money penalties, as reduced by each full year of medical practice according to the terms of the loan contract, is paid in full.

(2) Upon notification from the Dean of the College of Medicine of the University of Arkansas for Medical Sciences and the Secretary of the Department of Health that exigent circumstances warrant a waiver of the suspension, the Arkansas State Medical Board shall reinstate the holder's license.

(3) In deciding whether to suspend a holder's medical license, the Arkansas State Medical Board, at its discretion, may adopt any or all recommendations, findings of fact, and conclusions of law issued or adopted by the Arkansas Rural Medical Practice Student Loan and Scholarship Board, an arbitrator, or a court.

History. Acts 1957, No. 198, § 13; 1965, No. 85, § 1; 1973, No. 486, § 1; 1981, No. 708, § 1; 1981, No. 876, § 1; A.S.A. 1947, § 72-613; Acts 1993, No. 1219, § 23; 1995, No. 1257, § 3; 2001, No. 464, § 5; 2007, No. 123, § 3; 2007, No. 1058, § 10; 2009, No. 1178, § 1; 2019, No. 910, § 4901; 2019, No. 990, § 100.

by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b)(2).

The 2019 amendment by No. 990, in (a)(2)(A)(i), deleted "any crime involving moral turpitude or conviction of" preceding "a felony" and added "listed under § 17-3-102".

Amendments. The 2019 amendment

17-95-410. Denial, suspension, or revocation — Proceedings.

(a) Any person may file a complaint with the Arkansas State Medical Board against any person having a license to practice medicine in this state charging the licensee with:

(1) Failure to have the necessary qualifications as set out in § 17-95-403; and

(2) The commission of any of the offenses enumerated and described as unprofessional conduct in § 17-95-409.

(b) If the board finds a probable violation of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., or the rules of the board, the board shall review the complaint and issue an order and notice of hearing to the licensee.

(c)(1) The order and notice of hearing shall set forth a specification of charges in sufficient detail that the person accused shall have full and complete disclosure of any alleged acts of misconduct, impropriety, or lack of qualification.

(2) When an order and notice of hearing is issued, the board or its agent shall send by registered mail to the person's last address of record

a copy of the order and notice of hearing along with a written notice of the time and place of the hearing and a statement advising the person that he or she may be present in person or by counsel to offer evidence and be heard in his or her defense.

(3) The time fixed for the hearing shall not be less than thirty (30) days from the date of the mailing of the notice.

(d) At the time and place fixed for a hearing before the board, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his or her defense. The board shall not be bound by strict or technical rules of evidence but shall consider all evidence fully and fairly. However, all oral testimony considered by the board must be under oath.

(e)(1) At the conclusion of the hearing, the board shall first decide whether the accused is guilty of the charges against him or her and then decide on appropriate disciplinary action.

(2) If the accused is found not guilty, the board shall dismiss the charges.

(3) If the accused is found guilty, the board may do one (1) or more of the following:

(A) Revoke his or her license;

(B) Suspend his or her license for a period not to exceed one (1) year;

(C) Issue a reprimand;

(D) Impose a probation allowing the licensee to continue practicing under terms and conditions found to be in the best interest of the accused and the general public; or

(E) Levy a fine of up to one thousand dollars (\$1,000) per violation of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and collect out-of-pocket costs of investigation incurred by the board to conduct the disciplinary hearing.

(4) If the board suspends the license, it may issue a temporary license for whatever duration it decides and renew this temporary license at its discretion.

(f) Appeals may be had by either of the parties from the decision of the board in the manner now provided by law. All evidence considered by the board shall be reduced to writing and available for the purpose of appeal or certiorari to any of the parties of the hearing.

(g) Nothing in this section shall be construed so as to deprive any person of his or her rights without a full, fair, and impartial hearing.

History. Acts 1957, No. 198, § 14; A.S.A. 1947, § 72-614; Acts 1989, No. 362, § 1; 1993, No. 290, § 1; 2001, No. 464, § 6; 2019, No. 315, § 1625.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

17-95-411. Fees.

The Arkansas State Medical Board shall charge the following fees:

(1)(A) For application for license by examination or by credentials, four hundred dollars (\$400).

(B) If it is determined by the board that the credentials of the applicant are insufficient or the applicant withdraws his or her application before taking the examination, the board may return such portion of the fee as allowed by the rules of the board;

(2) For a temporary license or permit, fifty dollars (\$50.00) for each six-month period;

(3) For certification of licentiate to another state, fifteen dollars (\$15.00); and

(4)(A)(i) For annual license or reregistration fee, seventy dollars (\$70.00).

(ii) Except as provided in subdivision (4)(C) of this section, an annual license or reregistration fee is to be imposed upon each physician who holds a license to practice medicine in the State of Arkansas.

(B) The annual license or reregistration fee may be changed by the board provided that the amount shall be fixed by the board not less than sixty (60) days in advance of January 1 of each year.

(C) The board shall waive the annual license or reregistration fee of a physician who:

(i) Holds a license to practice medicine in the State of Arkansas; and

(ii) Is an active-duty member of the military.

History. Acts 1957, No. 198, §§ 11, 15; § 1; 2017, No. 204, § 3; 2019, No. 315, 1983, No. 334, §§ 1, 2; 1985, No. 890, § 1626.
 §§ 1, 2; A.S.A. 1947, §§ 72-611, 72-615; **Amendments.** The 2019 amendment substituted "rules" for "regulations" in
 Acts 1987, No. 503, § 1; 1991, No. 593, § 1; 1993, No. 276, § 2; 1995, No. 721, (1)(B).

17-95-412. Academic licenses.

(a) The Arkansas State Medical Board may issue an academic license to practice medicine to any physician who meets:

(1) The qualifications and requirements set forth in the rules of the Arkansas State Medical Board; and

(2) The conditions and requirements set forth in subsection (b) of this section.

(b)(1) The physician shall:

(A) Submit an application to the Arkansas State Medical Board;

(B) Provide information the Arkansas State Medical Board by rule may require;

(C) Pay a licensure fee that the Arkansas State Medical Board may set by rule to cover the costs of administering the Alternative to Discipline Program; and

(D) Be serving as a faculty member in the State of Arkansas under the supervision of a faculty member licensed by the Arkansas State Medical Board at an academic medical program accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association operated in the State of Arkansas and established by and under the control of a medical school located in the State of Arkansas and accredited by an accrediting agency recognized by the United States Department of Education or approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education.

(2) The academic license to practice medicine in the State of Arkansas shall authorize the practice of medicine only within the clinical and educational programs in the State of Arkansas that are established and administered by a medical school located in the State of Arkansas and accredited by an accrediting agency recognized by the United States Department of Education or approved by the Arkansas Higher Education Coordinating Board to seek accreditation by an accrediting agency recognized by the United States Department of Education.

(c)(1) The Arkansas State Medical Board shall issue each academic license for a period of one (1) year.

(2) At the end of the one (1) year, the academic license shall lapse, and the physician shall make an additional application to the Arkansas State Medical Board if the physician desires to continue the practice of medicine under the academic license.

(3) At the end of the second year of practice with an academic license, the physician is eligible for an active, unrestricted license to practice medicine in the state.

(d) A physician who obtains an academic license to practice medicine in the State of Arkansas shall comply with the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and all rules of the Arkansas State Medical Board.

History. Acts 2005, No. 497, § 1; 2017, No. 147, § 3; 2017, No. 1061, § 1; 2019, No. 701, § 1.

Amendments. The 2019 amendment substituted “Academic” for “Educational” in the section heading; substituted “academic” for “educational” in the introductory language of (a); in (b)(1)(D), deleted “or be affiliated with and” following “faculty member in the State of Arkansas”

and inserted “located in the State of Arkansas and”; in (b)(2), substituted “academic” for “educational” and inserted “located in the State of Arkansas and”; substituted “academic” for “educational” in (c)(1); inserted “academic” and “under the academic license” in (c)(2); added (c)(3); and substituted “academic” for “educational” in (d).

17-95-413. Nonparticipation in maintenance of licensure or maintenance of certification — Definitions.

(a) As used in this section:

(1) "Maintenance of certification" means any process requiring periodic recertification examinations or other activities to maintain specialty medical certification; and

(2) "Specialty medical board certification" means a certification by a board that:

(A) Specializes in one (1) particular area of medicine; and

(B) Typically requires examinations that are in addition to the requirements of the Arkansas State Medical Board to practice medicine.

(b) The Arkansas State Medical Board shall not require any form of specialty medical board recertification or any maintenance of certification to practice medicine in this state.

History. Acts 2019, No. 804, § 1.

17-95-414. Multiyear license or registration for physicians.

(a) The Arkansas State Medical Board shall offer a multiyear license or registration for physicians as an option other than the annual renewal of license or registration.

(b) Following initial licensure or registration, a physician may request a multiyear license or registration for a period of two (2) years by providing the following information to the board with the application:

(1) All information necessary for the licensure or registration under law or rule to include proof of continuing medical education equivalent to the period requesting; and

(2) Payment of the fees for licensure or registration for two (2) years, if the requested licensure or registration is for a period of two (2) years.

History. Acts 2021, No. 803, § 1.

A.C.R.C. Notes. Acts 2021, No. 803, § 2, provided: "Rules.

"(a) The Arkansas State Medical Board shall promulgate rules necessary to implement this act.

"(b)(1) When adopting the initial rules to implement this act, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

"(A) On or before January 1, 2022; or

"(B) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

"(2) The board shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so the Legislative Council may consider the rule for approval before January 1, 2022."

SUBCHAPTER 5 — CRITICAL MEDICAL SHORTAGE AREAS

SECTION.

17-95-503. Temporary license.

17-95-503. Temporary license.

(a) The Arkansas State Medical Board may issue a temporary license to any physician who meets the qualifications and requirements for medical licensure as established by the board except for successful passage of the examination as prescribed by the rules of the board.

However, the physician must fulfill the following additional conditions and requirements to be eligible for temporary licensure:

(1) The physician must practice medicine in an area of critical medical shortage in Arkansas; and

(2) The physician, if a graduate of a foreign medical school, must have satisfactorily passed the Educational Commission for Foreign Medical Graduates examination.

(b) To be eligible for a renewal of a temporary license by the board, the physician must fulfill the following requirements to be administered by the board:

(1) The physician must submit a written request for the renewal to the board;

(2) The physician must agree to repeat the examination for licensure during the twelve-month term of the renewed temporary license; and

(3) The physician must continue to fulfill the conditions and requirements of this subchapter for temporary licensure during the term of the renewed licensure.

(c) The board shall review the physician's progress toward successfully passing the examination for licensure, as well as the physician's performance in the community where he or she is practicing medicine before renewing the physician's temporary license.

History. Acts 1977, No. 415, §§ 3, 4; A.S.A. 1947, §§ 72-630, 72-631; Acts 1992 (1st Ex. Sess.), No. 45, § 3; 2019, No. 315, § 1627.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the first sentence of (a).

SUBCHAPTER 7 — TREATMENT OF CHRONIC INTRACTABLE PAIN

SECTION.

17-95-703. Definitions.

17-95-704. Arkansas State Medical Board — Treatment — Prohibitions.

17-95-703. Definitions.

As used in this subchapter:

(1) "Chronic intractable pain" means a pain state for which the cause of the pain cannot be removed or otherwise treated and for which no relief or cure has been found after reasonable efforts by a physician;

(2)(A) "Dangerous or controlled drugs" means drugs used for pain relief, including, but not limited to:

(i) Opioids; and

(ii) Other drugs classified under Schedule II, III, IV, or V by the United States Food and Drug Administration.

(B) "Dangerous or controlled drugs" does not include any substance the prescription of which is illegal under federal law;

(3) "Disciplinary action" means any remedial or punitive sanctions imposed on a licensed physician by the Arkansas State Medical Board;

(4) “Patient” means a person seeking medical diagnosis and treatment; and

(5) “Physician” means a licensee of the board.

History. Acts 2003, No. 1405, § 1;
2019, No. 386, § 51.

Amendments. The 2019 amendment
repealed former (1).

17-95-704. Arkansas State Medical Board — Treatment — Prohibitions.

(a)(1) A physician shall not be subject to disciplinary action by the Arkansas State Medical Board solely for prescribing dangerous or controlled drugs for the relief of chronic intractable pain.

(2)(A)(i) Any allegation of improper prescribing determined to require a board hearing shall be referred to the Pain Management Review Committee before any board hearing or action.

(ii)(a) However, in exceptional limited substantive instances requiring immediate action to protect the public health, an emergency action under § 25-15-211(c) may be implemented.

(b) The implementation of an emergency action under § 25-15-211(c) shall in no way be used by the board to circumvent, void, supplant, or otherwise limit the role of the committee as provided in this subchapter.

(B) The board shall provide the committee all necessary documentation for the review process in a timely manner.

(3) The board shall direct the committee to use the criteria under subsections (d) and (e) of this section to review a physician’s conduct in regard to prescribing, administering, ordering, or dispensing pain medications and other drugs necessary to treat chronic intractable pain.

(4)(A) If the board determines that an allegation or a question regarding a physician’s prescribing does not justify a board hearing, in lieu of a board hearing, the board may refer a physician to the committee for review and recommendations to the board.

(B) The review and recommendations under subdivision (a)(4)(A) of this section shall not adversely affect the physician’s license or licensure status.

(b) The board shall:

(1) Make reasonable efforts to notify healthcare providers under its jurisdiction of the existence of this subchapter;

(2) Inform any healthcare provider licensed by the board and investigated regarding the provider’s practices in the management of pain of the existence of this subchapter; and

(3)(A) In a disciplinary hearing, present opinion evidence from a full-time active practice physician in direct patient care who is knowledgeable in pain management.

(B) The physician has the right to present testimony from a full-time active practice physician in direct patient care who is knowledgeable in pain management.

(c)(1) In lieu of a finding of gross and ignorant malpractice, the board after a hearing may incrementally impose sanctions as follows:

(A) Monitor prescribing habits of the physician not to exceed six (6) months;

(B) Require the physician to voluntarily surrender his or her United States Drug Enforcement Administration license to the board for a specified period of time not to exceed three (3) months;

(C) Suspend the physician's license, stay the suspension, and require monitoring of prescribing habits;

(D) Revoke the physician's license, stay revocation, and require monitoring of the physician's prescribing habits for a specified time; and

(E) Revoke the physician's license for serious violations of statutes and rules.

(2) With a finding of severe violation of statutes and rules, the board may initially impose the more severe sanctions.

(3) At any level of sanction, the board may require continuing medical education hours in proper prescribing habits.

(d) Based upon evaluation and management of a patient's individual needs, a physician may:

(1) Treat a patient who develops chronic intractable pain with a dangerous or controlled drug to relieve the patient's pain;

(2) Continue to treat the patient for as long as the pain persists;

(3) Treat the pain by managing it with dangerous or controlled drugs in amounts or combinations that may not be appropriate for treating another medical condition;

(4) Administer large doses of dangerous or controlled drugs for pain management if the benefit of relief outweighs the risk of the large dose; and

(5) Administer a large dose of a dangerous or controlled drug even if its use may increase the risk of death if the purpose is not to cause or assist in a patient's death.

(e) A physician may not:

(1) Prescribe or administer dangerous or controlled drugs intended to manage chronic intractable pain to treat a patient for chemical dependency on drugs or controlled substances;

(2) Prescribe or administer dangerous or controlled drugs to a person the physician knows to be using drugs for nontherapeutic purposes;

(3) Prescribe or administer dangerous or controlled drugs to a person for other than legitimate medical purposes; or

(4)(A) Cause or assist in causing the suicide, euthanasia, or mercy killing of any individual.

(B) However, causing or assisting in causing the suicide, euthanasia, or mercy killing of any individual does not include prescribing, dispensing, or administering medical treatment for the purpose of alleviating pain or discomfort even if that use may increase the risk of death so long as the treatment is not furnished for the purpose of causing or assisting in causing the death of the individual.

History. Acts 2003, No. 1405, § 1; 2005, No. 2164, § 1; 2019, No. 315, §§ 1628, 1629.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (c)(1)(E) and (c)(2).

SUBCHAPTER 8 — PHYSICIAN ASSISTANT COMMITTEE

SECTION.

17-95-801. Physician Assistant Committee — Members.

SECTION.

17-95-802. Duties of Physician Assistant Committee.

17-95-801. Physician Assistant Committee — Members.

(a)(1) The Physician Assistant Committee is created with the Arkansas State Medical Board.

(2) The committee shall consist of five (5) members as follows:

(A) Three (3) members who shall be members of the board.

(i) Two (2) members as described in this subdivision (a)(2)(A) shall be physicians.

(ii) One (1) member as described in this subdivision (a)(2)(A) shall be a physician assistant; and

(B) Two (2) physician assistant members selected by the board from a list of physician assistants nominated by the Arkansas Academy of Physician Assistants, Inc.

(b)(1)(A) Committee members who are physician assistants shall serve three-year terms.

(B) Committee members who are physician assistants shall not serve more than two (2) consecutive terms.

(2) A physician assistant committee member shall serve until a successor is appointed by the board.

(3) If a vacancy occurs among the committee members who are physician assistants, the board shall appoint a new member from a list of three (3) physician assistants nominated by the Arkansas Academy of Physician Assistants, Inc., to fill the vacancy.

(c)(1) The committee shall elect a chair with powers and duties the committee shall fix.

(2) The Chair of the Arkansas State Medical Board shall serve a two-year term.

(3) A chair may be elected for no more than two (2) consecutive terms.

(d)(1) A quorum of the committee shall be three (3) members.

(2) The committee shall hold a meeting at least quarterly and at other times the committee considers advisable to review applications for licensure or renewal and for approval of the protocol between the physician assistant and the supervising physician.

(e)(1) The committee members who are physician assistants shall serve without remuneration.

(2) However, if funds are available, the committee members who are physician assistants may receive expense reimbursement and stipends in accordance with §§ 25-16-902 and 25-16-903, as follows:

(A) Their actual expenses while attending regular and special meetings of the committee; and

(B) A per diem allowance when in attendance at regular or special meetings of the committee.

(f) The members of the committee who are members of the board shall receive remuneration as now provided to members of the board.

History. Acts 2011, No. 1207, § 1; 2021, No. 634, § 5.

Amendments. The 2021 amendment added (a)(2)(A)(i) and (a)(2)(A)(ii).

17-95-802. Duties of Physician Assistant Committee.

The Physician Assistant Committee shall review and make recommendations at the request of the Arkansas State Medical Board regarding all matters relating to physician assistants, including without limitation:

(1) Applications for licensure and renewal;

(2) Disciplinary proceedings; and

(3) Any other issues pertaining to the regulation and practice of physician assistants.

History. Acts 2011, No. 1207, § 1; 2021, No. 634, § 6.

Amendments. The 2021 amendment added “review and make recommendations at the request of the Arkansas State

Medical Board regarding all matters relating to physician assistants, including without limitation” in the introductory language; deleted former (1) through (4); and added present (1) through (3).

SUBCHAPTER 9 — ARKANSAS GRADUATE REGISTERED PHYSICIAN ACT

SECTION.

17-95-903. Qualifications for licensure.

17-95-909. Exclusions of limitations of employment.

SECTION.

17-95-910. Violation.

17-95-903. Qualifications for licensure.

(a) Except as otherwise provided in this subchapter, an individual shall be licensed by the Arkansas State Medical Board before the individual may practice as a graduate registered physician.

(b) The board may grant a license as a graduate registered physician to an applicant who:

(1) Submits an application on forms approved by the board;

(2) Pays the appropriate fees as determined by the board;

(3) Has successfully completed Step 1 and Step 2 of the United States Medical Licensing Examination, Comprehensive Osteopathic Medical Licensing Examination, or the equivalent of both steps of a board-approved medical licensing examination within the two-year period immediately preceding application for licensure as a graduate registered physician, but not more than two (2) years after graduation from a medical school, an allopathic medical college, or an osteopathic medical college;

(4) Has not completed an approved postgraduate residency but has successfully completed Step 2 of the United States Medical Licensing Examination or the equivalent of Step 2 from a board-approved medical licensing examination within the two-year period immediately preceding application for licensure as a graduate registered physician;

(5) Has no licensure, certification, or registration under current discipline, revocation, suspension, or probation for cause resulting from the applicant's medical practice, unless the board considers the conditions and agrees to licensure;

(6) Enters into a physician-drafted protocol within six (6) months of initial licensure; and

(7) [Repealed.]

(8) Submits to the board any other information that the board deems necessary to evaluate the applicant's qualifications.

History. Acts 2015, No. 929, § 1; 2019, No. 990, § 101.

Amendments. The 2019 amendment repealed (b)(7).

17-95-909. Exclusions of limitations of employment.

This subchapter does not limit the employment arrangement of a graduate registered physician licensed under this subchapter.

History. Acts 2015, No. 929, § 1; 2019, No. 386, § 52.

substituted "subchapter does not" for "chapter shall not be construed to".

Amendments. The 2019 amendment

17-95-910. Violation.

Following the exercise of due process, the Arkansas State Medical Board may discipline a graduate registered physician who:

(1) Fraudulently or deceptively obtains or attempts to obtain a license;

(2) Fraudulently or deceptively uses a license;

(3) Violates any provision of this subchapter or any rules adopted by the board pertaining to this chapter;

(4) Is convicted of a felony listed under § 17-3-102;

(5) Is a habitual user of intoxicants or drugs to the extent that he or she is unable to safely perform as a graduate registered physician; or

(6) Has been adjudicated as mentally incompetent or has a mental condition that renders him or her unable to safely perform as a graduate registered physician.

History. Acts 2015, No. 929, § 1; 2019, No. 990, § 102.

added "listed under § 17-3-102" in (4); and deleted (7).

Amendments. The 2019 amendment

17-95-917. Medical malpractice — Professional and legal liability for actions.

RESEARCH REFERENCES

ALR. Liability for Malpractice in Diagnosis or Misdiagnosis of, or Treatment for, Migraine. 41 A.L.R.7th Art. 6 (2019).
Medical Malpractice in Failing to Diagnose or Properly Treat Multiple Sclerosis, or Misdiagnosing Another Condition as Multiple Sclerosis. 41 A.L.R.7th Art. 13 (2019).

SUBCHAPTER 10 — SURGICAL TECHNOLOGISTS

SECTION.
17-95-1003. Registration.

17-95-1003. Registration.

The Arkansas State Medical Board shall register as a surgical technologist an applicant who:

- (1) Has successfully completed a nationally accredited surgical technology program and holds a current credential as a certified surgical technologist from the National Board of Surgical Technology and Surgical Assisting or its successor or a national organization approved by the Arkansas State Medical Board;
- (2) Has successfully completed a surgical technologist training program during the person’s service as a member of any branch of the United States Armed Forces; or
- (3) Has been employed to practice as a surgical technologist at any time within the six (6) months before July 1, 2017, if the applicant registers with the Arkansas State Medical Board on or before March 31, 2020.

History. Acts 2017, No. 390, § 1; 2019, No. 264, § 1. substituted “March 31, 2020” for “July 1, 2018” in (3).
Amendments. The 2019 amendment

SUBCHAPTER 11 — ARKANSAS GENETIC COUNSELOR LICENSURE ACT

SECTION.
17-95-1101. Title.
17-95-1102. Definitions.
17-95-1103. Exemptions from genetic counselor licensure.
17-95-1104. Authority of the Arkansas State Medical Board.
17-95-1105. Title protection.
17-95-1106. Genetic counselor licensure.

SECTION.
17-95-1107. Renewal of genetic counselor license.
17-95-1108. Temporary licensure.
17-95-1109. Denial, suspension, revocation, or refusal to renew — Censure.
17-95-1110. Surrendering license due to retirement.

17-95-1101. Title.

This subchapter shall be known and may be cited as the “Arkansas Genetic Counselor Licensure Act”.

History. Acts 2019, No. 686, § 1.

17-95-1102. Definitions.

As used in this subchapter:

(1) “Genetic counseling” means the process of assisting individuals with understanding and adapting to the medical, psychological, and familial implications of genetic contributions to disease, which includes without limitation:

(A) Interpreting family and medical histories to assess the chance of disease occurrence or recurrence;

(B) Educating an individual or an individual’s family about inheritance, testing, management, prevention, resources, and research;

(C) Counseling an individual or an individual’s family to promote informed choices and adaption to the risk or condition;

(D) Estimating the likelihood of occurrence or recurrence of any potentially inherited or genetically influenced condition, which may involve:

(i) Obtaining and analyzing a complete health history of the individual and the individual’s family;

(ii) Reviewing the pertinent medical records;

(iii) Evaluating the risks from exposure to possible mutagens or teratogens; and

(iv) Discussing genetic testing to assist in the diagnosis of a condition or determine the carrier status of one (1) or more family members;

(E) Assisting the individual, the individual’s family, the individual’s healthcare provider, or the public to:

(i) Appreciate the medical, psychological, and social implications of a disorder, including the features, variability, usual course, and management options of the disorder;

(ii) Learn how genetic factors contribute to the disorder and affect the chance for recurrence of the condition in other family members;

(iii) Understand available options for coping with, preventing, or reducing the chance of occurrence or recurrence of a condition; and

(iv) Understand genetic tests, including without limitation diagnostic genetic tests, screening tests, or predispositional genetic tests, coordinate testing for inherited disorders, and interpret complex genetic test results; and

(F) Facilitating an individual’s or an individual’s family’s:

(i) Exploration of the perception of risk and burden associated with a genetic disorder;

(ii) Decision-making regarding testing or medical interventions consistent with their beliefs, goals, needs, resources, culture, and ethical or moral views; and

(iii) Adjustment and adaption to the condition or their genetic risk by addressing the need for psychological, social, and medical support;

(2) “Licensed genetic counselor” means a person who is licensed under this subchapter to engage in the practice of genetic counseling; and

(3)(A) "Supervision" means the ongoing, direct clinical review for the purposes of training or teaching, by an approved supervisor who monitors the performance or a person's supervised interaction with a client and provides regular documented face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised.

(B) "Supervision" may include without limitation the review of case presentation, audio tapes, video tapes, and direct observation.

History. Acts 2019, No. 686, § 1.

17-95-1103. Exemptions from genetic counselor licensure.

This subchapter does not require licensure as a genetic counselor of:

(1) An individual who is licensed or lawfully permitted to practice by this state as a healthcare professional and who is practicing within his or her scope of practice, including without limitation a physician or an advanced practice registered nurse;

(2) An individual who has successfully completed an accredited genetic counseling training program and who is:

(A) Reapplying for the American Board of Genetic Counseling certification examination and gathering logbook cases under supervision at an approved genetic counseling training site; or

(B) Practicing under direct supervision of a licensed physician;

(3) A student enrolled in an approved academic program in genetic counseling if the practice constitutes a part of a supervised course of study and the student is designated by a title that clearly indicates the student's status as a student or trainee;

(4)(A) An individual who is employed by a state genetics center to provide education regarding single gene conditions, including without limitation sickle cell, cystic fibrosis, and hemoglobinopathies.

(B) An individual described in subdivision (4)(A) of this section shall not use the title "genetic counselor" or any other title tending to indicate that he or she is a genetic counselor unless he or she is licensed in this state; and

(5)(A) A visiting genetic counselor who is certified by the American Board of Genetic Counseling or the American Board of Medical Genetics and Genomics from outside the state performing activities and services for a period of thirty (30) days each year.

(B) A visiting genetic counselor shall be licensed if the license is available in his or her home state.

History. Acts 2019, No. 686, § 1.

17-95-1104. Authority of the Arkansas State Medical Board.

The Arkansas State Medical Board shall:

(1) Develop appropriate rules necessary to regulate genetic counselors;

(2) Receive, review, and approve applications for genetic counselor licensure;

(3) Issue, renew, suspend, revoke, or deny licensure as a genetic counselor;

(4) Conduct hearings on investigative and disciplinary proceedings;

(5)(A) Maintain a database of all licensees and all persons whose licenses have been suspended, revoked, or denied.

(B) Access to a database under subdivision (5)(A) of this section shall be available upon written request and payment of an appropriate fee as determined by the board; and

(6) Perform other functions and duties required to carry out this subchapter.

History. Acts 2019, No. 686, § 1.

17-95-1105. Title protection.

A person shall not use or assume the title “licensed genetic counselor” or “genetic counselor” or use any words, letters, abbreviations, or insignia indicating or implying that the person holds a genetic counselor license unless the person is licensed by the Arkansas State Medical Board.

History. Acts 2019, No. 686, § 1.

17-95-1106. Genetic counselor licensure.

(a) The Arkansas State Medical Board shall license as a licensed genetic counselor an applicant who:

(1) Submits an application approved by the Arkansas State Medical Board;

(2) Pays an application fee approved by the Arkansas State Medical Board that is comparable to other fees for licensure of other midlevel healthcare professionals licensed by the Arkansas State Medical Board; and

(3) Provides evidence of:

(A) Having earned a master’s degree from a genetic counseling training program that is accredited by the American Board of Genetic Counseling or an equivalent as determined by the American Board of Genetic Counseling or the American Board of Medical Genetics and Genomics; and

(B) Meets the examination requirements for certification and has current certification as a genetic counselor by the American Board of Genetic Counseling or the American Board of Medical Genetics and Genomics.

(b)(1) The Arkansas State Medical Board may issue a license to an applicant who provides evidence that he or she is licensed to practice as a genetic counselor in another state or territory if the requirements for licensure in the other state or territory are equal to the requirements in this subchapter.

(2) The issuance of a license by reciprocity shall be at the sole discretion of the Arkansas State Medical Board.

History. Acts 2019, No. 686, § 1.

17-95-1107. Renewal of genetic counselor license.

(a) Except in the case of a temporary license under § 17-95-1108, a license shall be valid for a two-year period from the date of issuance.

(b) Upon receipt of a renewal application and renewal fees as determined by the Arkansas State Medical Board, the board shall renew a license to practice as a licensed genetic counselor.

(c)(1) As a condition of licensure renewal, a licensed genetic counselor shall submit documentation that he or she has completed fifty (50) hours of continuing education units approved by the board.

(2) The licensed genetic counselor is responsible for maintaining:

(A) Competent records of having completed qualified professional education for a period of four (4) years after close of the two-year period to which the records pertain; and

(B) Information with respect to having completed a qualified professional education to demonstrate that the education meets the requirements of this subchapter.

(3) The board may waive the continuing education requirement or grant an extension of time to complete the continuing education requirement in cases of retirement, illness, disability, or other undue hardship.

History. Acts 2019, No. 686, § 1.

17-95-1108. Temporary licensure.

(a)(1) The Arkansas State Medical Board may issue a temporary license to an applicant who does not meet the certification requirement in § 17-95-1106 if the applicant:

(A) Has been granted an active-candidate status by the American Board of Genetic Counseling;

(B) Applies for and takes the certification examination within twelve (12) months of the issuance of a temporary license; and

(C) Submits an application and appropriate application fees to the Arkansas State Medical Board.

(2) A temporary license is valid for one (1) year from the date of issuance.

(3)(A) A temporary license may be renewed for one (1) year if the applicant fails on his or her first attempt to pass the certification examination of the American Board of Genetic Counseling or the American Board of Medical Genetics and Genomics.

(B) An application for renewal shall be signed by a supervisor of the applicant.

(4) A temporary license shall expire automatically upon the earliest of:

(A) The date of issuance of a license under § 17-95-1106;

(B) Ninety (90) days after the date that the applicant fails on his or her second attempt to pass the certification examination; or

(C) The date printed on the temporary license.

(b) As a condition of temporary licensure, an applicant shall work under the supervision of a licensed genetic counselor or a licensed physician with current American Board of Genetic Counseling certification in clinical genetics when the applicant provides genetic counseling services.

(c) A temporary license shall not be issued if the applicant has failed the American Board of Genetic Counseling certification examination more than two (2) times.

History. Acts 2019, No. 686, § 1.

17-95-1109. Denial, suspension, revocation, or refusal to renew — Censure.

(a) The Arkansas State Medical Board may deny, suspend, revoke, or refuse to renew a license, or may reprimand, censure, place on probation, or otherwise discipline a licensee, upon proof that the licensee has:

(1) Obtained or attempted to obtain a license by fraud or deception;

(2) Been convicted of a felony under state or federal law;

(3) Been adjudicated mentally ill or incompetent by a court;

(4) Used illicit drugs or intoxicating liquors, narcotics, controlled substances, or other drugs or stimulants to an extent that adversely affects the practice of genetic counseling;

(5) Engaged in unethical or unprofessional conduct, including without limitation willful acts, negligence, or incompetence in the course of professional practice;

(6) Violated any provision of this subchapter or any rule of the board;
or

(7) Been denied licensure or disciplined in another state or territory in connection with a license in another state or territory.

(b) A licensee under subsection (a) of this section shall promptly deliver his or her license to the board if the licensee:

(1) Has his or her license suspended or revoked; or

(2) Surrenders his or her license with or without prejudice if the surrender is approved by the board.

(c) The board may restore a license or remove a probation on a license based on the decision of the board.

History. Acts 2019, No. 686, § 1.

17-95-1110. Surrendering license due to retirement.

(a) In order to retire his or her license, a licensed genetic counselor shall file an affidavit with the Arkansas State Medical Board stating the date on which the individual will retire or has retired and other information determined necessary by the board.

(b) If a licensed genetic counselor retires his or her license as described in subsection (a) of this section, the individual shall apply for licensure as provided in § 17-95-1106 and is not liable for renewal fees that may accrue during the retirement period.

History. Acts 2019, No. 686, § 1.

CHAPTER 96

PODIATRIC MEDICINE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS BOARD OF PODIATRIC MEDICINE.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-96-101. Definitions.

17-96-103. Unlawful acts — Penalties.

17-96-101. Definitions.

As used in this chapter:

(1) "Podiatric medicine" means the diagnosis and medical, mechanical, and surgical treatment of ailments of the human foot and ankle; and

(2) "Podiatrist" means a physician legally licensed to practice podiatric medicine. However, no podiatrist shall amputate the human foot or perform nerve or vascular grafting or administer any anesthetic other than a local anesthetic. All ankle surgery performed above the level of the foot other than skin and skin structures shall be performed in a facility accredited by either Medicare or by The Joint Commission.

History. Acts 1923, No. 610, §§ 1, 7, 9; 72-307, 72-309; Acts 1997, No. 966, § 1; 1937, No. 187, §§ 3, 4; Pope's Dig., 1999, No. 1370, § 1; 2019, No. 386, § 53. §§ 10845, 10853, 12110, 12116, 12118; **Amendments.** The 2019 amendment Acts 1973, No. 31, §§ 1, 5, 7; 1983, No. 429, §§ 1, 7, 9; A.S.A. 1947, §§ 72-301, repealed former (1).

17-96-103. Unlawful acts — Penalties.

(a) Any person who shall unlawfully obtain registration under this chapter, whether by false or untrue statements contained in the application to the Arkansas Board of Podiatric Medicine or by presenting to the board a fraudulent diploma, certificate for license, or one fraudulently obtained, or by practicing without any registration or certificate shall be guilty of a Class A misdemeanor.

(b) Except as otherwise provided in this section, any person who shall swear falsely to any affidavit or oral testimony made or given by virtue of the provisions of this chapter or the rules of the board shall be

guilty of perjury and upon conviction shall be subject to all the pains and penalties of perjury.

(c) Any person who shall knowingly violate any of the provisions of this chapter, upon conviction shall be fined a sum not exceeding one thousand dollars (\$1,000) or be imprisoned in the county jail not to exceed thirty (30) days, or be both fined and imprisoned.

History. Acts 1923, No. 610, §§ 5, 10; 1937, No. 187, § 2; Pope's Dig., §§ 10854, 12114, 12119; Acts 1973, No. 31, § 3; 1983, No. 429, § 5; A.S.A. 1947, §§ 72-

305, 72-310; Acts 1997, No. 966, § 2; 2005, No. 1994, § 202; 2019, No. 315, § 1630.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

SUBCHAPTER 2 — ARKANSAS BOARD OF PODIATRIC MEDICINE

SECTION.

17-96-202. Organization and proceedings.

17-96-203. Payment of expenses — Compensation of members and employees.

SECTION.

17-96-205. Rules on Schedule II narcotics.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-96-202. Organization and proceedings.

(a)(1) The Arkansas Board of Podiatric Medicine shall choose one (1) of its members as president and one (1) as secretary-treasurer at each annual meeting to be held in June.

(2) The board may meet more often if necessary in the discretion of the board at such times and places as it may deem proper for the examination of applicants who may wish to practice in this state and for the transaction of any other business that may come before it.

(3)(A) The board shall make and adopt all necessary rules and bylaws necessary or convenient to perform its duties and to transact business as required by law.

(B) The rules adopted under subdivision (a)(3)(A) of this section shall authorize the delegation of certain medical practices to persons other than podiatrists.

(b) The Secretary-treasurer of the Arkansas Board of Podiatric Medicine shall execute to the board a bond with approved security for the faithful performance of his or her duty.

(c)(1) The board shall keep a record book in which shall be registered the names, addresses, and license numbers of all persons legally entitled to practice in the State of Arkansas.

(2) Proceedings of the board shall be recorded in a minute book to be open at all reasonable times to public inspection.

(d) Three (3) members of the board of which two (2) shall be podiatrists shall constitute a quorum for the transaction of business.

History. Acts 1923, No. 610, § 3; Pope’s Dig., §§ 10847, 12112; Acts 1983, No. 429, § 3; A.S.A. 1947, § 72-303; Acts 1997, No. 966, § 5; 2009, No. 472, § 3; 2019, No. 315, § 1631.

Amendments. The 2019 amendment deleted “regulations” following “rules” in (a)(3)(A).

17-96-203. Payment of expenses — Compensation of members and employees.

(a) The Arkansas Board of Podiatric Medicine is empowered to incur whatever expenses the board may deem necessary or expedient in performing the board’s functions.

(b) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(c) All of the disbursements provided for in this section shall be made out of the fees and fines collected by the board.

History. Acts 1923, No. 610, § 8; Pope’s Dig., §§ 10852, 12117; Acts 1973, No. 31, § 6; 1983, No. 429, § 8; A.S.A. 1947, § 72-308; Acts 1997, No. 250, § 167; 2019, No. 910, § 4902.

deem necessary or expedient in performing the board’s functions” for “expenses it may deem necessary or expedient in performing its functions, and it may employ whatever assistants it may deem necessary or expedient and fix their compensation” in (a).

Amendments. The 2019 amendment, substituted “expenses the board may

17-96-205. Rules on Schedule II narcotics.

The Arkansas Board of Podiatric Medicine shall adopt rules:

(1) Limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board; and

(2) Requiring licensees of the board to check the information in the Prescription Drug Monitoring Program as required under § 20-7-604(d)(2).

History. Acts 2019, No. 112, § 1.

SUBCHAPTER 3 — LICENSING

SECTION.
17-96-303. Qualification of applicants.
17-96-304. Examinations.

SECTION.
17-96-308. Revocation.

17-96-303. Qualification of applicants.

(a) A person shall not take any examination for such registration unless that person shall furnish the Arkansas Board of Podiatric Medicine with satisfactory proof that he or she:

(1) Is twenty-one (21) years of age or over; and

(2) Has received a license or certificate of graduation from a legally incorporated, regularly established school of podiatric medicine recognized by the Council on Podiatric Medical Education of the American Podiatric Medical Association, Inc., within the states, territories, districts, and provinces of the United States or within any foreign country.

(b) No applicant shall be entitled to such registration and certificate unless the applicant shall have completed before the beginning of the applicant's course in podiatric medicine a minimum of three (3) years in an accredited university or college of the liberal arts or the sciences.

(c) A diploma issued by an accredited school of podiatric medicine, approved by the American Podiatric Medical Association, Inc., bestowing the degree "Doctor of Podiatric Medicine" shall be recognized as a qualification under this chapter only if the diploma represents the actual standards of preliminary and professional education established by the board.

(d)(1) A certificate issued by an accredited podiatric residency program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, Inc., as proof of the satisfactory completion of a minimum of a one-year postgraduate residency program.

(2) A podiatrist who graduated before 1990 and can show proof of continuous practice since graduation is exempt from the residency requirement.

(3) Podiatrists who are licensed to practice in the State of Arkansas before 1997 are exempt from the residency requirement.

History. Acts 1923, No. 610, § 4; 1937, No. 187, § 1; Pope's Dig., §§ 10848, 12113; Acts 1973, No. 31, § 2; 1983, No. 429, § 4; A.S.A. 1947, § 72-304; Acts 1997, No. 966, § 8; 2019, No. 990, § 103.

Amendments. The 2019 amendment

substituted "A person shall not take" for "No person shall be entitled to take" in the introductory language of (a); deleted former (a)(2) and redesignated (a)(3) as (a)(2).

17-96-304. Examinations.

(a) The Arkansas Board of Podiatric Medicine may make such rules governing the conduct of the examinations as it shall deem necessary, and willful violation of the rules shall subject the applicant to the loss of the examination fee.

(b)(1) Examinations shall be in the English language and shall be written and clinical.

(2) The board shall approve and designate the examinations to be given to those individuals who desire a license to practice podiatric medicine in the State of Arkansas. The board shall set forth the standards for successful completion of the examination for licensure.

(c)(1) An applicant who fails to pass an examination satisfactory to the board and is therefore refused registration shall be entitled to a reexamination within six (6) months after the refusal.

(2) The examination shall be at a meeting of the board called for the examination of applicants.

(3) The applicant shall make payment of an additional fee to be established by the board in an amount not to exceed one hundred dollars (\$100) for each reexamination.

(4) Two (2) such reexaminations shall exhaust the privilege under the original application.

History. Acts 1923, No. 610, § 5; 1937, No. 187, § 2; Pope's Dig., §§ 10849, 12114; Acts 1973, No. 31, § 3; 1983, No. 429, § 5; A.S.A. 1947, § 72-305; Acts 1997, No. 966, § 9; 2019, No. 315, § 1632.

Amendments. The 2019 amendment deleted "and regulations" following "rules" twice in (a).

17-96-308. Revocation.

(a)(1) The Arkansas Board of Podiatric Medicine, after hearing, may revoke by majority vote any certificate issued by it and cancel or suspend the registration of any podiatrist who has been convicted of violation of § 17-96-103.

(2) The board, after hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., by a majority vote may also revoke the certificate and cancel or suspend the registration of any person of whom the court records of a court of any state or territory within the United States or of the federal courts or the records of any court of jurisdiction in any foreign country show that the person has been found guilty of a criminal offense.

(3) The board, after hearing, by majority vote may also revoke the certificate and cancel or suspend the registration of any person whose registration was granted upon mistake of material fact.

(b) The board may subsequently, but not earlier than one (1) year thereafter, by unanimous vote, reissue any certificate and register anew any podiatrist whose certificate was revoked and whose registration was canceled by the board, except as otherwise provided in this subchapter.

(c)(1) The board, after hearing, may refuse to issue a certificate and cancel or suspend the registration of any person registered under the provisions of this chapter who, after investigation and hearing, shall be found guilty of grossly unprofessional and dishonest conduct. The board may impose a penalty not to exceed one thousand dollars (\$1,000) for each violation, require completion of appropriate educational programs or courses, place conditions or restrictions upon the licensee's license or practice, or such other requirements or penalties as may be appropriate

to the circumstances of the case and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.

(2) “Unprofessional and dishonest conduct” means, but is not limited to:

(A) The willful betrayal of a professional secret;

(B) Having professional connections with, or lending the use of one’s name to, an unregistered podiatrist or having professional connection with anyone who has been convicted in any court of any criminal offense whatsoever;

(C) [Repealed.]

(D) Habitual intemperance;

(E) Being habitually addicted to the use of morphine, opium, cocaine, or other drugs for other use than legal and legitimate purposes;

(F) Advertising in a false, fraudulent, deceptive, or misleading manner;

(G) Becoming physically or mentally incompetent to practice podiatric medicine as to endanger the public; or

(H) Gross negligence or malpractice.

History. Acts 1923, No. 610, § 7; 1937, No. 187, § 3; Pope’s Dig., §§ 10851, 12116; Acts 1973, No. 31, § 5; 1983, No. 429, § 7; A.S.A. 1947, § 72-307; Acts 1997, No. 966, § 12; 2019, No. 990, § 104.

Amendments. The 2019 amendment repealed (c)(2)(C).

CHAPTER 97

PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS

SUBCHAPTER.

2. ARKANSAS PSYCHOLOGY BOARD.

3. LICENSING.

5. PSYCHOLOGY INTERJURISDICTIONAL COMPACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

17-97-105. Privileged communications.

CASE NOTES

Cited: Vaughn v. State, 2020 Ark. 313, 608 S.W.3d 569 (2020).

SUBCHAPTER 2 — ARKANSAS PSYCHOLOGY BOARD

SECTION.

17-97-201. Creation — Members.

17-97-203. Powers and duties.

SECTION.

17-97-204. Collection and disposition of fees.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-97-201. Creation — Members.

(a)(1) There is created the Arkansas Psychology Board, which shall consist of nine (9) members who shall be appointed by the Governor for terms of five (5) years.

(2) The Governor shall appoint:

(A) One (1) academic psychologist engaged in the full-time teaching of psychology at the graduate level at an approved institute of higher education or holding an active faculty appointment in an American Psychological Association-approved pre- or post-doctoral internship program;

(B)(i) Four (4) practicing psychologists engaged in the full-time practice of psychology with at least one (1) psychologist engaged in the full-time, private practice of psychology.

(ii) The Governor shall ensure that the psychologist members reflect a diversity of practice specialties, including, but not limited to, clinical psychology, counseling psychology, health psychology, neuropsychology, and school psychology;

(C) Two (2) psychological examiners engaged in the full-time practice of psychology; and

(D) Two (2) persons who are not actively engaged in or retired from the practice of psychology who shall be voting members-at-large.

(3)(A) The academic psychologist member, the practicing psychologist members, and the psychological examiner members shall be appointed by the Governor after consulting the Arkansas Psychological Association Incorporated and the Arkansas Association of Masters in Psychology, Inc. and subject to confirmation by the Senate.

(B)(i) Of the two (2) members appointed pursuant to subdivision (a)(2)(D) of this section, one (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly.

(ii) Both shall be appointed from the state at large, subject to confirmation by the Senate.

(iii) The two (2) positions may not be held by the same person.

(iv) Both shall be full voting members but shall not vote on or participate in the administration or grading of examinations of applicants for licensure.

(C)(i) Any public member appointed under subdivision (a)(2)(D) of this section after July 28, 1995, shall be an Arkansas resident and shall have resided in Arkansas for at least five (5) years immediately preceding appointment.

(ii) Furthermore, the person shall never have been a psychologist or psychological examiner, an applicant or former applicant for licensure as a psychologist or psychological examiner, a member of another mental health profession, a member of a household that includes a psychologist or psychological examiner, or otherwise have conflicts of interest or the appearance of conflicts with his or her duties as a board member.

(4)(A) Each psychologist and psychological examiner appointed to the board after July 28, 1995, shall reside within the State of Arkansas, hold a current valid license to practice, and shall have been licensed to practice psychology in Arkansas for at least five (5) years immediately preceding his or her appointment to the board.

(B) At the time of appointment, each such member shall be free of any conflict of interest and the appearance of any conflict with his or her duties as a member of the board.

(C) To the extent possible, psychologist and psychological examiner board members shall be members or fellows of state or national professional organizations, such as the Arkansas Psychological Association Incorporated, the Arkansas Association of Masters in Psychology, Inc., or the American Psychological Association.

(5)(A) The Governor shall fill all vacancies on the board within thirty (30) days after the vacancy occurs.

(B) The Governor shall remove any member from the board if he or she:

(i) Ceases to be qualified;

(ii) Fails to attend three (3) successive board meetings without just cause as determined by the board;

(iii) Is found to be in violation of this chapter;

(iv) Pleads guilty or nolo contendere to or is found guilty of a felony listed under § 17-3-102 by a court of competent jurisdiction; or

(v) Pleads guilty or nolo contendere to or is found guilty of malfeasance, misfeasance, or nonfeasance in relation to his or her board duties by a court of competent jurisdiction.

(b) All vacancies occurring on the board shall be filled by the Governor for the unexpired term and, for the professional members from the list of those qualified, within thirty (30) days after the vacancy occurs.

(c) The term of each member shall expire on December 31 of the year designated, and on or before that date, for the professional members, the association shall make its recommendations to the Governor for a successor appointee. A successor appointee shall be named by the Governor on or before the expiration date of the terms so expiring.

(d) Immediately and before entering upon the duties of office, the members of the board shall take the constitutional oath of office and

shall file it in the office of the Governor, who upon receiving the oath of office shall issue to each member a certificate of appointment.

(e) Each member may receive expense reimbursement in accordance with § 25-16-901 et seq. However, that expense shall in no case exceed the fees collected by the board.

History. Acts 1955, No. 129, §§ 1, 4, 5; 1979, No. 939, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-1501, 72-1504, 72-1505; Acts 1995, No. 955, § 2; 1997, No. 250, § 168; 2003, No. 1482, § 4; 2015, No. 1100, §§ 39, 40; 2019, No. 990, § 105.

Amendments. The 2019 amendment substituted “felony listed under § 17-3-102” for “felony or an unlawful act involving moral turpitude” in (a)(5)(B)(iv).

17-97-203. Powers and duties.

The Arkansas Psychology Board shall:

- (1) Be empowered to hire assistants as necessary to carry on its activities, within the limits of funds available to the board;
- (2) Be empowered to accept grants from foundations or institutions;
- (3) From time to time adopt rules that comply with national guidelines and standards as it may deem necessary for the performance of its duties;
- (4) Examine and pass upon the qualifications of the applicants for the practice of psychology as provided; and
- (5) Adopt the code of ethics of the American Psychological Association to govern appropriate practices or behavior as referred to in this chapter and file the code with the Secretary of State within thirty (30) days before the effective date of the code of ethics.

History. Acts 1955, No. 129, §§ 5, 17; A.S.A. 1947, §§ 72-1505, 72-1517; Acts 2003, No. 1482, § 6; 2019, No. 315, § 1633.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (3).

17-97-204. Collection and disposition of fees.

- (a) The Arkansas Psychology Board may establish various fees and penalties for services related to provision of temporary permits, printed materials, handling returned checks, costs incurred in processing delinquent payments, and other reasonable services as may be determined by the board and the Department of Health is authorized to collect such fees and penalties.
- (b) These fees, along with other cash funds made available to the board, shall be used to supplement the board with adequate income to provide for the efficient and necessary operation of the board.
- (c) The fees and penalties shall be limited to the following types with the maximum amounts as indicated:

Type of Service	Maximum Charge
Photocopying, per page	\$ 1.00
Personal name change	10.00

Type of Service	Maximum Charge
Service charge on returned checks	20.00
Replacement of returned checks	20.00
Temporary permit	100.00
Delinquent payment	100.00
Mailing lists/labels	100.00
Verification of licensure	10.00
Delinquent CE penalty	50.00

History. Acts 1983, No. 648, § 7; A.S.A. 1947, § 72-1519; Acts 1993, No. 993, § 1; 2001, No. 1502, § 1; 2003, No. 1482, § 7; 2019, No. 910, § 4903.

Amendments. The 2019 amendment, in (a), substituted “may establish various

fees and penalties” for “is authorized to establish and collect various fees and penalties” and added “and the Department of Health is authorized to collect such fees and penalties”.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-97-302. Psychologists — Application — Qualifications.
- 17-97-303. Psychological examiners — Application — Qualifications.
- 17-97-305. Issuance.
- 17-97-307. Professional titles.
- 17-97-308. Annual registration — Failure to reregister.

SECTION.

- 17-97-310. Denial, suspension, revocation, fine, letter of reprimand, or additional education — Grounds — Reinstatement.
- 17-97-311. Denial, suspension, revocation, or other penalty — Proceedings.
- 17-97-312. Criminal background checks.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-97-302. Psychologists — Application — Qualifications.

(a) Any person wishing to obtain the right to practice as a psychologist in this state who has not heretofore been licensed to do so shall make application to the Arkansas Psychology Board through the Chair of the Arkansas Psychology Board in a form and in a manner as shall be adopted and prescribed by the board and obtain from the board a license to do so.

(b)(1) A candidate for a license shall furnish the board with satisfactory evidence that he or she:

(A) Has received a doctoral degree in psychology from an accredited institution recognized by the board as maintaining satisfactory standards at the time the degree was granted or, in lieu of a degree, a doctoral degree in a closely allied field if it is the opinion of the board that the training required therefor is substantially similar;

(B) Has had at least two (2) years of experience in psychology of a type considered by the board to be qualifying in nature with at least one (1) of those years being postdoctoral work;

(C) Is competent in psychology, as shown by passing examinations, written or oral, or both, as the board deems necessary;

(D) Is not considered by the board to be engaged in unethical practice;

(E) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in § 17-3-102; and

(F) Has not failed an examination given by the board within the preceding six (6) months.

(2) At its discretion, the board may accept satisfactory substitute training and experience in lieu of that prescribed in subdivision (b)(1) of this section.

(c) Notwithstanding requirements for licensure as outlined in this chapter, the board shall issue a senior psychologist license to an applicant who has:

(1) At least twenty (20) years of licensure to practice psychology in a state of the United States or in Canada if that license was based on a doctoral degree;

(2) Received no disciplinary sanction during the entire period of licensure;

(3) Passed the Arkansas complementary examination; and

(4) Tendered the appropriate application and fees as required under this chapter or the rules of the board.

History. Acts 1955, No. 129, § 6; A.S.A. 1947, § 72-1506; Acts 1993, No. 1219, § 24; 1997, No. 995, § 1; 1997, No. 1317, § 9; 2003, No. 1482, §§ 8, 9; 2019, No. 315, § 1634; 2019, No. 990, § 106.

Amendments. The 2019 amendment

by No. 315 deleted “and regulations” following “rules” in (c)(4).

The 2019 amendment by No. 990 deleted former (b)(1)(A) and redesignated the remaining subdivisions accordingly.

17-97-303. Psychological examiners — Application — Qualifications.

(a) Any person wishing to obtain the right to practice as a psychological examiner who has not heretofore been licensed to do so shall make application to the Arkansas Psychology Board through the Chair of the Arkansas Psychology Board upon a form and in the manner as shall be adopted and prescribed by the board and shall obtain from the board a license to do so.

(b)(1) A candidate for a license shall furnish the board with satisfactory evidence that he or she:

(A) Has a master's degree in psychology or a closely related field from an accredited educational institution recognized by the board as maintaining satisfactory standards;

(B) Is competent as a psychological examiner as shown by passing examinations, written or oral, or both, as the board deems necessary;

(C) Is not considered by the board to be engaged in unethical practice;

(D) Has applied for a criminal background check and has not been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in § 17-3-102; and

(E) Has not failed an examination given by the board within the preceding six (6) months.

(2) At its discretion, the board may accept satisfactory substitute training and experience in lieu of that prescribed in subdivision (b)(1) of this section.

(c) The board shall apply through its rules the qualifications of supervising psychologists and the restrictions and reporting requirements of supervision so as to implement the intent of this chapter without restricting the professional integrity of the psychological examiner and psychologist or the ultimate responsibility of the supervising psychologist.

(d)(1)(A) A psychological examiner licensed before December 31, 1997, shall be granted independent practice except in neuropsychological assessment and projective personality assessment upon the board's receiving a letter requesting independent practice and a revised statement of intent.

(B) No additional hours of clinical supervision shall be required for a license granted under subdivision (d)(1)(A) of this section.

(2) A psychological examiner licensed after December 31, 1997, shall be privileged to practice independently except in neuropsychological assessment and projective personality assessment, if the person:

(A) Has completed a master's degree program in psychology;

(B) Has completed three thousand (3,000) hours of approved clinical supervised training after making application for independent practice; and

(C) Has filed a revised statement of intent with the board and has provided documentation of having received appropriate training and experience in those areas requested for independent practice.

(3) After December 31, 2013, no new psychological examiner license shall be issued.

History. Acts 1955, No. 129, § 6; A.S.A. 1947, § 72-1506; Acts 1993, No. 1219, § 25; 1997, No. 1317, § 10; 2001, No. 1502, § 3; 2003, No. 1482, § 10; 2007, No. 505, § 2; 2019, No. 315, § 1635; 2019, No. 990, § 107.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (c).

The 2019 amendment by No. 990 deleted former (b)(1)(A) and redesignated the remaining subdivisions accordingly.

17-97-305. Issuance.

(a) **LICENSE TO PRACTICE PSYCHOLOGY.** The Arkansas Psychology Board shall be the sole agency empowered to examine candidates concerning competence in the practice of psychology and to grant license for the practice of psychology at the appropriate level. The license shall be signed by the Chair of the Arkansas Psychology Board and attested by the Secretary of the Arkansas Psychology Board under the seal of the board, whereupon a proper license shall be issued in accordance with this chapter.

(b) **PROVISIONAL LICENSE.**

(1) The board shall issue a provisional license to an applicant who has:

- (A) Passed the examinations prescribed by the board;
- (B) Satisfied the preliminary requirements of §§ 17-97-302 and 17-97-303; and
- (C) Paid the fee for a provisional license.

(2) A provisional license holder is entitled to practice psychology under the supervision of a psychologist to meet the requirements for issuance of a license under this section.

(3) The board shall adopt rules that apply to provisional license holders identifying:

- (A) The activities that holders may engage in; and
- (B) Services that may be provided by holders.

(4) The board may refuse to renew the provisional license of a person who does not meet the requirements prescribed by § 17-97-303.

(5) At the discretion of the board, the board may accept satisfactory substitute education in lieu of the education under § 17-97-302(b)(1)(A).

(c) **PROVISIONAL LICENSE APPLICATION.**

(1) An applicant for examination for a provisional license shall:

- (A) Apply on forms prescribed by the board; and
- (B) Submit the required fees with the application.

(2) The board may require that the applicant verify the application.

(d) **PROVISIONAL LICENSE EXAMINATION QUALIFICATIONS.**

(1) An applicant may take an examination for a provisional license if the applicant:

(A) Has received:

- (i) A doctoral degree in psychology from a regionally accredited educational institution;
- (ii) A doctoral degree in psychology or the substantial equivalent of a doctoral degree in psychology in both subject matter and extent of training from a regionally accredited educational institution; or
- (iii) Admission into an American Psychological Association-accredited internship program;

(B) Has attained the age of majority;

(C) [Repealed.]

(D) Is physically and mentally competent to provide psychological services with reasonable skill and safety, as determined by the board;

(E) Is not afflicted with a mental or physical disease or condition that would impair the applicant's competency to provide psychological services;

(F) Has not been convicted of a felony listed under § 17-3-102;

(G) Does not use drugs or alcohol to an extent that affects the applicant's professional competency;

(H) Has not engaged in fraud or deceit in making the application; and

(I) Has not:

(i) Aided or abetted the practice of psychology by a person not licensed under this chapter in representing that the person is licensed under this chapter;

(ii) Represented that the applicant is licensed under this chapter to practice psychology when the applicant is not licensed; or

(iii) Practiced psychology in this state without a license under this chapter or without being exempt under this chapter.

(2) In determining under § 17-97-302(b)(1)(A) whether a degree is substantially equivalent to a doctoral degree in psychology, the board shall consider whether at the time the degree was conferred the doctoral program met the prevailing standards for training in the area of psychology, including standards for training in clinical, school, and industrial counseling.

History. Acts 1955, No. 129, § 13; A.S.A. 1947, § 72-1513; Acts 2001, No. 1502, § 4; 2003, No. 1482, § 12; 2019, No. 887, §§ 1, 2; 2019, No. 990, §§ 108, 109.

Amendments. The 2019 amendment by Act 887 added (b)(5) and (d)(1)(A)(iii).

The 2019 amendment by Act 990 repealed (d)(1)(C); in (d)(1)(F), deleted "a crime involving moral turpitude or" preceding "a felony" and added "listed under § 17-2-102".

17-97-307. Professional titles.

(a) Except as otherwise provided herein, it is specifically prohibited that any individual or organization, other than those licensed pursuant to this chapter, shall present himself or herself or be presented to the public by any title incorporating the name "psychological", "psychologist", or "psychology".

(b)(1) Any psychological scientist employed by a recognized research laboratory, college, or university may represent himself or herself by the academic or research title conferred upon him or her by the administration of the laboratory, college, or university. Nothing in this section shall be construed as permitting those persons to offer their service to any other persons or organizations as consultants or to accept remuneration for any psychological services other than that of their institutional salaries unless they have been licensed under this chapter.

(2) Visiting lecturers from recognized laboratories, colleges, or universities are exempt from the provisions of this section and may utilize their academic or research titles when presenting lectures to similar institutions or organizations.

(3) Students of psychology, psychological interns, and other persons preparing for the profession of psychological examiner or psychologist under qualified supervision in recognized training institutions or facilities may be designated by such titles as “psychological intern”, “psychological trainee”, or other titles clearly indicating such training status.

(4)(A) Individuals who have been certified as school psychology specialists by the Division of Elementary and Secondary Education shall be permitted to use the title “school psychology specialist”.

(B) Those persons shall be restricted in their practice to employment within those settings under the purview of the State Board of Education.

History. Acts 1955, No. 129, § 3; A.S.A. substituted “Division of Elementary and Secondary Education” for “Department of Education” in (b)(4)(A).
1947, § 72-1503; Acts 1995, No. 279, § 1;
2019, No. 910, § 2250.

Amendments. The 2019 amendment

17-97-308. Annual registration — Failure to reregister.

(a) The Arkansas Psychology Board may adopt and enforce rules requiring every person having a license to practice to pay an annual registration fee in a sum to be fixed by the board.

(b) The fee shall become due on a date fixed by the board.

(c) Failure to pay the annual registration fee within the time stated shall automatically suspend the right of any licentiate to practice his or her profession while delinquent.

(d) An application for annual renewal of the license of a psychologist or psychological examiner will not be considered if the applicant has not supplied forty (40) hours of continuing education for the previous biennium, i.e., twenty-four (24) months.

(e)(1) All programs of continuing education for licensed psychologists or psychological examiners shall be subject to the approval of the board.

(2) The board is authorized to prescribe by rule the:

(A) Minimum standards and requirements for continuing education programs for licensees;

(B) Procedures and policies for administering continuing education programs; and

(C) Manner and conditions under which credit will be granted for participation in continuing education programs.

(f)(1) If any licentiate fails for three (3) consecutive years to pay the fee, then it shall be the duty of the board, without hearing or notice, to cancel his or her license subject to reinstatement.

(2) If application for reinstatement is made, the board shall consider the professional qualifications of the applicant as in the case of an original application.

History. Acts 1955, No. 129, § 15; 1502, § 5; 2003, No. 1482, § 14; 2019, No. A.S.A. 1947, § 72-1515; Acts 2001, No. 315, §§ 1636, 1637; 2019, No. 990, § 110.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rule” in (a); and substituted “rule” for “regulations” in the introductory language of (e)(2).

The 2019 amendment by No. 990 deleted “moral character and” preceding “professional” in (f)(2).

17-97-310. Denial, suspension, revocation, fine, letter of reprimand, or additional education — Grounds — Reinstatement.

(a) The Arkansas Psychology Board may refuse to grant a certificate or may suspend or revoke any license for a period to be determined by the board, may impose a fine of up to five thousand dollars (\$5,000), may issue a letter of reprimand, and may require additional hours of education of a licensee on the following grounds:

(1) The employment of fraud or deception in applying for a license or in passing the examination provided for in this chapter;

(2) The practice of psychology under a false or assumed name or the impersonation of another practitioner of a like or different name;

(3) Habitual intemperance in the use of ardent spirits, narcotics, or stimulants to such an extent as to incapacitate the licensee or applicant for the performance of his or her duties;

(4) Violation of the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.;

(5) Practice of a level of psychology inappropriate to the particular license held by the licentiate;

(6) Upon recommendation of the ethics committee of the Arkansas Psychological Association Incorporated or of the American Psychological Association;

(7) Negligence or wrongful actions in the performance of his or her duties; or

(8) A violation of any rule of the board or the rules of ethics as adopted by the board.

(b) The board shall refuse to issue or shall revoke the license of any person who has been found guilty of or pleaded guilty or nolo contendere to any of the offenses listed in § 17-97-312(f) unless the person requests and the board grants a waiver pursuant to § 17-97-312(h).

(c)(1) Upon satisfactory proof that any applicant or licentiate has been guilty of any of the offenses listed in subsection (a) of this section, the board may refuse to grant a certificate to the applicant or may revoke a license of the licentiate upon a vote of at least three (3) members of the board.

(2) An application for reinstatement may be made to the board, and upon favorable action by three (3) of its members, the board may reinstate the applicant.

History. Acts 1955, No. 129, § 10; 1482, § 16; 2007, No. 827, § 138; 2019, A.S.A. 1947, § 72-1510; Acts 1997, No. No. 315, § 1638.

1317, § 11; 2001, No. 1502, § 6; 2003, No. **Amendments.** The 2019 amendment

deleted “or regulation” following “rule” in
(a)(8).

17-97-311. Denial, suspension, revocation, or other penalty — Proceedings.

(a)(1)(A) The Arkansas Psychology Board may investigate or cause to be investigated any allegation or evidence that appears to show that a person:

- (i) Is practicing psychology without a license; or
- (ii) Licensed to practice in Arkansas and anyone under his or her supervision is or may be in violation of this chapter or of any of the rules adopted by the board.

(B) The board shall adopt rules to ensure that:

(i) Any individual selected by the board to conduct an investigation does not have a conflict of interest that would disqualify the individual from being an impartial investigator in the matter being investigated; and

(ii) Any investigation of a respondent in an investigated matter involves the input of an advisor who possesses qualification or experience, or both, substantially comparable to or greater than that of the investigated respondent.

(2) The board may not recommend suspension, revocation, or any other penalty described in § 17-97-310 affecting a certificate or license or refuse to issue or to renew any certificate for any cause listed in this chapter unless the person accused has been given at least twenty (20) days' notice in writing by registered mail, with return receipt demanded, of the charges against the person and an opportunity for a public hearing by the board.

(3) The written notice shall be mailed to the person's last known address, but the nonappearance of the person shall not prevent such a hearing.

(b) At the hearing the board may administer an oath and procure by its subpoenas the attendance of witnesses and the production of relevant books and papers.

(c) Any action of or ruling or order made or entered by the board declining to issue a certificate, declining to recommend licensure, or recommending suspension, revocation, or other penalty described in § 17-97-310 that affects a certificate or license shall be subject to review by the courts of this state in the same manner and subject to the same powers and conditions that are now provided by law in regard to rulings, orders, and findings of other quasi-judicial bodies in Arkansas where not otherwise specifically provided.

History. Acts 1955, No. 129, §§ 11, 14; A.S.A. 1947, §§ 72-1511, 72-1514; Acts 2001, No. 1502, § 7; 2003, No. 1482, § 17; 2019, No. 315, § 1639.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (a)(1)(A)(ii).

17-97-312. Criminal background checks.

(a) Each first-time applicant for a license issued by the Arkansas Psychology Board shall be required to apply to the Identification Bureau of the Division of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Division of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau shall forward to the board all releasable information obtained concerning the applicant.

(e) At the conclusion of any background check required by this section, the Identification Bureau shall promptly destroy the fingerprint card of the applicant.

(f) For purposes of this section, the board shall follow the licensing restrictions based on criminal records under § 17-3-102.

(g) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(h)(1) Any information received by the board from the Identification Bureau under this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the division.

(i) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than this background check.

(k) The board shall adopt the necessary rules to fully implement the provisions of this section.

History. Acts 1997, No. 1317, § 12; 2003, No. 1087, § 16; 2003, No. 1385, § 1; 2003, No. 1482, § 18; 2005, No. 1923, § 3; 2011, No. 570, § 122; 2017, No. 367, §§ 19, 20; 2017, No. 664, §§ 13, 14; 2019, No. 315, § 1640; 2019, No. 990, § 111.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (l).

The 2019 amendment by No. 990, in (d), inserted "releasable" and deleted "in the commission of any offense listed in subsection (f) of this section" following "applicant"; rewrote (f); deleted the (g)(1) designation; deleted (g)(2) and (h) and redesignated the remaining subdivisions accordingly; deleted (m); and made a stylistic change.

SUBCHAPTER 5 — PSYCHOLOGY INTERJURISDICTIONAL COMPACT

SECTION.

17-97-501. Text of compact.

17-97-502. Administration of compact —
Rules.

SECTION.

17-97-503. Construction.

17-97-501. Text of compact.

The Psychology Interjurisdictional Compact is enacted into law and entered into by this state with all states legally joining therein and in the form substantially as follows:

PSYCHOLOGY INTERJURISDICTIONAL COMPACT**Article I — Purpose**

Whereas, states license psychologists, in order to protect the public through verification of education, training and experience and ensure accountability for professional practice; and

Whereas, this Compact is intended to regulate the day to day practice of telepsychology (i.e. the provision of psychological services using telecommunication technologies) by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority; and

Whereas, this Compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for 30 days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority;

Whereas, this Compact is intended to authorize State Psychology Regulatory Authorities to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state;

Whereas, this Compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of psychologists and that such state regulation will best protect public health and safety;

Whereas, this Compact does not apply when a psychologist is licensed in both the Home and Receiving States; and

Whereas, this Compact does not apply to permanent in-person, face-to-face practice, it does allow for authorization of temporary psychological practice.

Consistent with these principles, this Compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice psychology;

2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;

3. Encourage the cooperation of Compact States in the areas of psychology licensure and regulation;
4. Facilitate the exchange of information between Compact States regarding psychologist licensure, adverse actions and disciplinary history;
5. Promote compliance with the laws governing psychological practice in each Compact State; and
6. Invest all Compact States with the authority to hold licensed psychologists accountable through mutual recognition of Compact State licenses.

Article II — Definitions

A. “Adverse Action” means: Any action taken by a State Psychology Regulatory Authority which finds a violation of a statute or regulation that is identified by the State Psychology Regulatory Authority as discipline and is a matter of public record.

B. “Association of State and Provincial Psychology Boards (ASPPB)” means: the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.

C. “Authority to Practice Interjurisdictional Telepsychology” means: a licensed psychologist’s authority to practice telepsychology, within the limits authorized under this Compact, in another Compact State.

D. “Bylaws” means: those Bylaws established by the Psychology Interjurisdictional Compact Commission pursuant to Article X for its governance, or for directing and controlling its actions and conduct.

E. “Client/Patient” means: the recipient of psychological services, whether psychological services are delivered in the context of health-care, corporate, supervision, and/or consulting services.

F. “Commissioner” means: the voting representative appointed by each State Psychology Regulatory Authority pursuant to Article X.

G. “Compact State” means: a state, the District of Columbia, or United States territory that has enacted this Compact legislation and which has not withdrawn pursuant to Article XIII, Section C or been terminated pursuant to Article XII, Section B.

H. “Coordinated Licensure Information System” also referred to as “Coordinated Database” means: an integrated process for collecting, storing, and sharing information on psychologists’ licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

I. “Confidentiality” means: the principle that data or information is not made available or disclosed to unauthorized persons and/or processes.

J. “Day” means: any part of a day in which psychological work is performed.

K. “Distant State” means: the Compact State where a psychologist is physically present (not through the use of telecommunications tech-

nologies), to provide temporary in-person, face-to-face psychological services.

L. "E.Passport" means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

M. "Executive Board" means: a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

N. "Home State" means: a Compact State where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one Compact State and is practicing under the Authorization to Practice Interjurisdictional Telepsychology, the Home State is the Compact State where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one Compact State and is practicing under the Temporary Authorization to Practice, the Home State is any Compact State where the psychologist is licensed.

O. "Identity History Summary" means: a summary of information retained by the FBI, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.

P. "In-Person, Face-to-Face" means: interactions in which the psychologist and the client/patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.

Q. "Interjurisdictional Practice Certificate (IPC)" means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that grants temporary authority to practice based on notification to the State Psychology Regulatory Authority of intention to practice temporarily, and verification of one's qualifications for such practice.

R. "License" means: authorization by a State Psychology Regulatory Authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

S. "Non-Compact State" means: any State which is not at the time a Compact State.

T. "Psychologist" means: an individual licensed for the independent practice of psychology.

U. "Psychology Interjurisdictional Compact Commission" also referred to as "Commission" means: the national administration of which all Compact States are members.

V. "Receiving State" means: a Compact State where the client/patient is physically located when the telepsychological services are delivered.

W. "Rule" means: a written statement by the Psychology Interjurisdictional Compact Commission promulgated pursuant to Article XI of

the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a Compact State, and includes the amendment, repeal or suspension of an existing rule.

X. "Significant Investigatory Information" means:

1. investigative information that a State Psychology Regulatory Authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or

2. investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified and/or had an opportunity to respond.

Y. "State" means: a state, commonwealth, territory, or possession of the United States, the District of Columbia.

Z. "State Psychology Regulatory Authority" means: the Board, office or other agency with the legislative mandate to license and regulate the practice of psychology.

AA. "Telepsychology" means: the provision of psychological services using telecommunication technologies.

BB. "Temporary Authorization to Practice" means: a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this Compact, in another Compact State.

CC. "Temporary In-Person, Face-to-Face Practice" means: where a psychologist is physically present (not through the use of telecommunications technologies), in the Distant State to provide for the practice of psychology for 30 days within a calendar year and based on notification to the Distant State.

Article III — Home State Licensure

A. The Home State shall be a Compact State where a psychologist is licensed to practice psychology.

B. A psychologist may hold one or more Compact State licenses at a time. If the psychologist is licensed in more than one Compact State, the Home State is the Compact State where the psychologist is physically present when the services are delivered as authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

C. Any Compact State may require a psychologist not previously licensed in a Compact State to obtain and retain a license to be authorized to practice in the Compact State under circumstances not authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

D. Any Compact State may require a psychologist to obtain and retain a license to be authorized to practice in a Compact State under

circumstances not authorized by Temporary Authorization to Practice under the terms of this Compact.

E. A Home State's license authorizes a psychologist to practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only if the Compact State:

1. Currently requires the psychologist to hold an active E.Passport;
2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;
3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;
4. Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation FBI, or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the Bylaws and Rules of the Commission.

F. A Home State's license grants Temporary Authorization to Practice to a psychologist in a Distant State only if the Compact State:

1. Currently requires the psychologist to hold an active IPC;
2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;
3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;
4. Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation FBI, or other designee with similar authority, no later than ten years after activation of the Compact; and
5. Complies with the Bylaws and Rules of the Commission.

Article IV — Compact Privilege to Practice Telepsychology

A. Compact States shall recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice telepsychology in other Compact States (Receiving States) in which the psychologist is not licensed, under the Authority to Practice Interjurisdictional Telepsychology as provided in the Compact.

B. To exercise the Authority to Practice Interjurisdictional Telepsychology under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, OR authorized by Provincial Statute or Royal Charter to grant doctoral degrees; OR

b. A foreign college or university deemed to be equivalent to 1 (a) above by a foreign credential evaluation service that is a member of the

National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; AND

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degree and a minimum of one academic year of full-time graduate study for master's degree;

j. The program includes an acceptable residency as defined by the Rules of the Commission.

3. Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;

4. Have no history of adverse action that violate the Rules of the Commission;

5. Have no criminal record history reported on an Identity History Summary that violates the Rules of the Commission;

6. Possess a current, active E.Passport;

7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology; criminal background; and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the Rules of the Commission.

C. The Home State maintains authority over the license of any psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology.

D. A psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology will be subject to the Receiving State's scope of practice. A Receiving State may, in accor-

dance with that state's due process law, limit or revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology in the Receiving State and may take any other necessary actions under the Receiving State's applicable law to protect the health and safety of the Receiving State's citizens. If a Receiving State takes action, the state shall promptly notify the Home State and the Commission.

E. If a psychologist's license in any Home State, another Compact State, or any Authority to Practice Interjurisdictional Telepsychology in any Receiving State, is restricted, suspended or otherwise limited, the E.Passport shall be revoked and therefore the psychologist shall not be eligible to practice telepsychology in a Compact State under the Authority to Practice Interjurisdictional Telepsychology.

Article V — Compact Temporary Authorization to Practice

A. Compact States shall also recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice temporarily in other Compact States (Distant States) in which the psychologist is not licensed, as provided in the Compact.

B. To exercise the Temporary Authorization to Practice under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, OR authorized by Provincial Statute or Royal Charter to grant doctoral degrees; OR

b. A foreign college or university deemed to be equivalent to 1 (a) above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; AND

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degree;

j. The program includes an acceptable residency as defined by the Rules of the Commission.

3. Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;

4. No history of adverse action that violate the Rules of the Commission;

5. No criminal record history that violates the Rules of the Commission;

6. Possess a current, active IPC;

7. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the Rules of the Commission.

C. A psychologist practicing into a Distant State under the Temporary Authorization to Practice shall practice within the scope of practice authorized by the Distant State.

D. A psychologist practicing into a Distant State under the Temporary Authorization to Practice will be subject to the Distant State's authority and law. A Distant State may, in accordance with that state's due process law, limit or revoke a psychologist's Temporary Authorization to Practice in the Distant State and may take any other necessary actions under the Distant State's applicable law to protect the health and safety of the Distant State's citizens. If a Distant State takes action, the state shall promptly notify the Home State and the Commission.

E. If a psychologist's license in any Home State, another Compact State, or any Temporary Authorization to Practice in any Distant State, is restricted, suspended or otherwise limited, the IPC shall be revoked and therefore the psychologist shall not be eligible to practice in a Compact State under the Temporary Authorization to Practice.

Article VI — Conditions of Telepsychology Practice in a Receiving State

A. A psychologist may practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate State Psychology Regulatory Authority, as defined in the Rules of the Commission, and under the following circumstances:

1. The psychologist initiates a client/patient contact in a Home State via telecommunications technologies with a client/patient in a Receiving State;

2. Other conditions regarding telepsychology as determined by Rules promulgated by the Commission.

Article VII — Adverse Actions

A. A Home State shall have the power to impose adverse action against a psychologist's license issued by the Home State. A Distant State shall have the power to take adverse action on a psychologist's Temporary Authorization to Practice within that Distant State.

B. A Receiving State may take adverse action on a psychologist's Authority to Practice Interjurisdictional Telepsychology within that Receiving State. A Home State may take adverse action against a psychologist based on an adverse action taken by a Distant State regarding temporary in-person, face-to-face practice.

C. If a Home State takes adverse action against a psychologist's license, that psychologist's Authority to Practice Interjurisdictional Telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's Temporary Authorization to Practice is terminated and the IPC is revoked.

1. All Home State disciplinary orders which impose adverse action shall be reported to the Commission in accordance with the Rules promulgated by the Commission. A Compact State shall report adverse actions in accordance with the Rules of the Commission.

2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the Rules of the Commission.

3. Other actions may be imposed as determined by the Rules promulgated by the Commission.

D. A Home State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a Receiving State as it would if such conduct had occurred by a licensee within the Home State. In such cases, the Home State's law shall control in determining any adverse action against a psychologist's license.

E. A Distant State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under Temporary Authorization Practice which occurred in that Distant State as it would if such conduct had occurred by a licensee within the Home State. In such cases, Distant State's law shall control in determining any adverse action against a psychologist's Temporary Authorization to Practice.

F. Nothing in this Compact shall override a Compact State's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the Compact State's law. Compact States must require psychologists who enter any alternative programs to not provide telepsychology services under the Authority to Practice Interjurisdictional Telepsychology or provide temporary psychological services under the Temporary Authorization to Practice in any other Compact State during the term of the alternative program.

G. No other judicial or administrative remedies shall be available to a psychologist in the event a Compact State imposes an adverse action pursuant to subsection C, above.

Article VIII — Additional Authorities Invested in a Compact State's Psychology Regulatory Authority

A. In addition to any other powers granted under state law, a Compact State's Psychology Regulatory Authority shall have the authority under this Compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a Compact State's Psychology Regulatory Authority for the attendance and testimony of witnesses, and/or the production of evidence from another Compact State shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing State Psychology Regulatory Authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

2. Issue cease and desist and/or injunctive relief orders to revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice.

3. During the course of any investigation, a psychologist may not change his/her Home State licensure. A Home State Psychology Regulatory Authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The Home State Psychology Regulatory Authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change his/her Home State licensure. The Commission shall promptly notify the new Home State of any such decisions as provided in the Rules of the Commission. All information provided to the Commission or distributed by Compact States pursuant to the psychologist shall be confidential, filed under seal and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated or discretionary sharing of information by Compact States.

Article IX — Coordinated Licensure Information System

A. The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists individuals to whom this Compact is applicable in all Compact States as defined by the Rules of the Commission.

B. Notwithstanding any other provision of state law to the contrary, a Compact State shall submit a uniform data set to the Coordinated

Database on all licensees as required by the Rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Significant investigatory information;
4. Adverse actions against a psychologist's license;
5. An indicator that a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice is revoked;
6. Non-confidential information related to alternative program participation information;
7. Any denial of application for licensure, and the reasons for such denial; and
8. Other information which may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. The Coordinated Database administrator shall promptly notify all Compact States of any adverse action taken against, or significant investigative information on, any licensee in a Compact State.

D. Compact States reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the Compact State reporting the information.

E. Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the Compact State reporting the information shall be removed from the Coordinated Database.

Article X — Establishment of the Psychology Interjurisdictional Compact Commission

A. The Compact States hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.

1. The Commission is a body politic and an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. The Commission shall consist of one voting representative appointed by each Compact State who shall serve as that state's Commissioner. The State Psychology Regulatory Authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the Compact State. This delegate shall be limited to:

a. Executive Director, Executive Secretary or similar executive;
b. Current member of the State Psychology Regulatory Authority of a Compact State; OR

c. Designee empowered with the appropriate delegate authority to act on behalf of the Compact State.

2. Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compact State in which the vacancy exists.

3. Each Commissioner shall be entitled to one (1) vote with regard to the promulgation of Rules and creation of Bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.

4. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article XI.

6. The Commission may convene in a closed, non-public meeting if the Commission must discuss:

a. Non-compliance of a Compact State with its obligations under the Compact;

b. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation against the Commission;

d. Negotiation of contracts for the purchase or sale of goods, services or real estate;

e. Accusation against any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information which is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law enforcement purposes;

i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal and state statute.

7. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

C. The Commission shall, by a majority vote of the Commissioners, prescribe Bylaws and/or Rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including but not limited to:

1. Establishing the fiscal year of the Commission;
2. Providing reasonable standards and procedures:
 - a. for the establishment and meetings of other committees; and
 - b. governing any general or specific delegation of any authority or function of the Commission;
3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;
4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;
5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar law of any Compact State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;
6. Promulgating a Code of Ethics to address permissible and prohibited activities of Commission members and employees;
7. Providing a mechanism for concluding the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;
8. The Commission shall publish its Bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compact States;
9. The Commission shall maintain its financial records in accordance with the Bylaws; and

10. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

D. The Commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rule shall have the force and effect of law and shall be binding in all Compact States;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Psychology Regulatory Authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compact State;

5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

8. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property real, personal or mixed;

9. To establish a budget and make expenditures;

10. To borrow money;

11. To appoint committees, including advisory committees comprised of Members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the Bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice and telepsychology practice.

E. The Executive Board

The elected officers shall serve as the Executive Board, which shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Board shall be comprised of six members:

a. Five voting members who are elected from the current membership of the Commission by the Commission;

b. One ex-officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

2. The ex-officio member must have served as staff or member on a State Psychology Regulatory Authority and will be selected by its respective organization.

3. The Commission may remove any member of the Executive Board as provided in Bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or Bylaws, changes to this Compact legislation, fees paid by Compact States such as annual dues, and any other applicable fees;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or Bylaws.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials and services.

3. The Commission may levy on and collect an annual assessment from each Compact State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission which shall promulgate a rule binding upon all Compact States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Compact States, except by and with the authority of the Compact State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its Bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or

licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, Executive Director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, Executive Director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, Executive Director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.

Article XI — Rulemaking

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the Compact States rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any Compact State.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or Rules by the Commission, and at least sixty (60) days in advance of the meeting at

which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission; and
2. On the website of each Compact States' Psychology Regulatory Authority or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
2. The text of the proposed rule or amendment and the reason for the proposed rule;
3. A request for comments on the proposed rule from any interested person; and
4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons who submit comments independently of each other;
2. A governmental subdivision or agency; or
3. A duly appointed person in an association that has having at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the Executive Director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;
2. Prevent a loss of Commission or Compact State funds;
3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

Article XII — Oversight, Dispute Resolution and Enforcement

A. Oversight

1. The Executive, Legislative and Judicial branches of state government in each Compact State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a Compact State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Compact State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other Compact States of the nature of the default, the proposed means of remedying the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the Compact States, and all rights, privileges and benefits conferred by this Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the Compact States.

4. A Compact State which has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

5. The Commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the state of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a Compact State, the Commission shall attempt to resolve disputes related to the Compact which arise among Compact States and between Compact and Non-Compact States.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices against a Compact State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and Bylaws. The relief sought may

include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

Article XIII — Date of Implementation of the Psychology
Interjurisdictional Compact Commission and Associated Rules,
Withdrawal, and Amendments

A. The Compact shall come into effect on the date on which the Compact is enacted into law in the seventh Compact State. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state which joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any Compact State may withdraw from this Compact by enacting a statute repealing the same.

1. A Compact State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Psychology Regulatory Authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a Compact State and a Non-Compact State which does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Compact States. No amendment to this Compact shall become effective and binding upon any Compact State until it is enacted into the law of all Compact States.

Article XIV — Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. If this Compact shall be held contrary to the constitution of any state member thereto, the Compact shall remain in full force and effect as to the remaining Compact States.

History. Act 2021, No. 883, § 1.

A.C.R.C. Notes. Acts 2021, No. 883,
§ 2, provided: "Rules Under This Act.

"(a)(1) The Arkansas Psychology Board shall promulgate rules necessary to implement this act.

“(2) When adopting the initial rules to implement this act, the final rules shall be filed with the Secretary of State for adoption under § 25-15-204(f):

“(A) On or before January 1, 2022; or

“(B) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

“(b) The board shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rule for approval before January 1, 2022.”

17-97-502. Administration of compact — Rules.

(a) The Arkansas Psychology Board is the Psychology Interjurisdictional Compact administrator for this state.

(b) The board may adopt rules that are consistent with the Psychology Interjurisdictional Compact necessary to implement this subchapter.

(c) The board is not required to adopt the rules of the Psychology Interjurisdictional Compact Commission for those rules to be effective in this state.

History. Act 2021, No. 883, § 1.

A.C.R.C. Notes. Acts 2021, No. 883, § 2, provided: “Rules Under This Act.

“(a)(1) The Arkansas Psychology Board shall promulgate rules necessary to implement this act.

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“(A) On or before January 1, 2022; or

“(B) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

“(b) The board shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rule for approval before January 1, 2022.”

17-97-503. Construction.

Except as to licensing under § 17-80-404(d), this subchapter does not supersede or preempt the Telemedicine Act, § 17-80-401 et seq.

History. Act 2021, No. 883, § 1.

A.C.R.C. Notes. Acts 2021, No. 883, § 2, provided: “Rules Under This Act.

“(a)(1) The Arkansas Psychology Board shall promulgate rules necessary to implement this act.

“(2) When adopting the initial rules to implement this act, the final rules shall be filed with the Secretary of State for adoption under § 25-15-204(f):

“(A) On or before January 1, 2022; or

“(B) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

“(b) The board shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rule for approval before January 1, 2022.”

CHAPTER 98

REGISTRATION OF DISEASE INTERVENTION SPECIALISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE BOARD OF DISEASE INTERVENTION SPECIALISTS.
3. EXAMINATION AND REGISTRATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-98-103. Definitions.

17-98-103. Definitions.

As used in this chapter:

(1) “Associate disease intervention specialist” means a person who meets the educational and specialized training requirements of this chapter, but does not meet the experience requirements established for a registered disease intervention specialist;

(2) “Continuing education unit” means value given for participation in organized continuing education experience under reasonable sponsorship, capable direction, and qualified instruction approved by the State Board of Disease Intervention Specialists;

(3) “Disease intervention” means activities used to prevent disease transmission by ensuring that those people who have a sexually transmitted disease and those who have been exposed to a sexually transmitted disease are promptly located, examined, and adequately treated before any signs or symptoms of a disease appear or before any laboratory evidence of a disease is demonstrable or before an infected person would have sought treatment voluntarily;

(4) “Disease intervention specialist-in-training” means a person who meets the educational requirements of this chapter, but does not meet the specialized training requirements established for an associate disease intervention specialist; and

(5) “Registered disease intervention specialist” means a trained healthcare professional meeting the educational, specialized training, and experience requirements of this chapter who practices sexually transmitted disease intervention with patients, sex partners, and others suspected of having a sexually transmitted disease.

History. Acts 1993, No. 107, § 2; 2019, No. 386, § 54.

Amendments. The 2019 amendment repealed former (2).

SUBCHAPTER 2 — STATE BOARD OF DISEASE INTERVENTION SPECIALISTS

SECTION.

17-98-203. Rules.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-98-203. Rules.

- (a) The State Board of Disease Intervention Specialists shall adopt such rules as are reasonably necessary to administer this chapter.
- (b) The Chair of the State Board of Disease Intervention Specialists and the Secretary of the State Board of Disease Intervention Specialists may administer oaths and subpoena witnesses.
- (c) [Repealed.]
- (d)(1) The board shall promulgate rules establishing standards for continuing education as a means to maintain professional competency.
- (2) The standards shall be established in a manner to assure that a variety of approved continuing education programs are available to registered disease intervention specialists, including, but not limited to, academic studies, in-service education, institutes, seminars, lectures, conferences, workshops, extension courses, home study programs, articles published, and scientific papers published.
- (3) The continuing education units shall be awarded for direct participation in courses approved by the board.
- (e) The board may contract with another agency or association to perform part or all of the duties in establishing procedures to record and retain data on all registered disease intervention specialists in good standing.

History. Acts 1993, No. 107, § 8; 2019, No. 315, §§ 1641, 1642; 2019, No. 910, § 4904.
Amendments. The 2019 amendment

by No. 315 deleted “and regulations” following “rules” in (a) and (d)(1).
The 2019 amendment by No. 910 repealed (c).

SUBCHAPTER 3 — EXAMINATION AND REGISTRATION

SECTION.
17-98-302. Admission to examination.
17-98-303. Issuance of certificate without examination.

SECTION.
17-98-305. Application for reinstatement.
17-98-306. Refusal to renew — Suspension or revocation.

17-98-302. Admission to examination.

(a) The State Board of Disease Intervention Specialists shall admit to examination any person who makes application to the Secretary of the State Board of Disease Intervention Specialists on forms prescribed and furnished by the board, pays an application fee set by the board to defray the expense of examination, and submits satisfactory proof to the board that he or she:

- (1) Meets the minimum educational requirements;
- (2) Meets the minimum specialized training requirements, as determined by the board;
- (3) Has had two (2) years of field experience in human immunodeficiency virus/sexually transmitted disease intervention; and
- (4) Is actively engaged in the field of human immunodeficiency virus/sexually transmitted disease intervention at the time he or she makes application.

(b) The minimum educational requirements for admission to examination for registration as a disease intervention specialist shall be as follows:

- (1) A bachelor's or master's of public health degree with specialization in disease intervention from a school of public health approved by the board; or
- (2) A bachelor's degree with a minimum of thirty (30) semester hours or its equivalent in biology, chemistry, physics, math, sociology, psychology, or criminal justice, plus two (2) years' experience in disease intervention or training courses approved by the board.

(c) Any person meeting the educational and specialized training requirements of this chapter who does not meet the experience requirements of this chapter may make application to the board, through a process prescribed by the board, for acceptance as an associate disease intervention specialist. The board shall accept such an application when submitted, if accompanied by the required fee.

(d) Any person who meets the educational requirements of this chapter but does not meet the specialized training requirements established for an associate disease intervention specialist may make application to the board, through a process prescribed by the board, for acceptance as a disease intervention specialist-in-training.

History. Acts 1993, No. 107, § 10; deleted former (a)(1) and redesignated the 2019, No. 990, § 112. remaining subdivisions accordingly.

Amendments. The 2019 amendment

17-98-303. Issuance of certificate without examination.

The State Board of Disease Intervention Specialists shall issue a certificate of registration without examination to any person who makes application on forms prescribed and furnished by the board, pays a registration fee set by the board, and submits satisfactory proof that he or she:

- (1) Has had at least two (2) years' experience in the field of human immunodeficiency virus/sexually transmitted disease intervention; and
- (2) Is registered as a disease intervention specialist in a state in which the qualifications for registration are not lower than the qualifications for registration in this state at the time he or she applies for registration.

History. Acts 1993, No. 107, § 12; deleted former (1) and redesignated the 2019, No. 990, § 113. remaining subsections accordingly.

Amendments. The 2019 amendment

17-98-305. Application for reinstatement.

- (a) A former registered disease intervention specialist whose certificate has expired or has been suspended or revoked may make application for reinstatement by paying a renewal fee and submitting satisfactory proof to the State Board of Disease Intervention Specialists that he or she has complied with the continuing education requirements.
- (b) The board shall consider the professional qualifications of the applicant as in the case of an original application.

History. Acts 1993, No. 107, § 14; added the (a) and (b) designations; and 2019, No. 990, § 114. deleted "moral character and" preceding "professional" in (b).

Amendments. The 2019 amendment

17-98-306. Refusal to renew — Suspension or revocation.

The State Board of Disease Intervention Specialists may refuse to renew or may suspend or revoke a certificate upon proof that the applicant is guilty of fraud, deceit, gross negligence, incompetency, or misconduct relative to his or her duties as a disease intervention specialist.

History. Acts 1993, No. 107, § 15; deleted (1); deleted the (2) designation; 2019, No. 990, § 114. and made stylistic changes.

Amendments. The 2019 amendment

CHAPTER 99 RESPIRATORY CARE PRACTITIONERS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. REGULATORY AGENCIES.
- 3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-99-102. Definitions.

17-99-102. Definitions.

As used in this chapter:

(1) "Licensed allied health practitioner" means any person formally trained and tested in an allied health field qualified to deliver medical care to the public and licensed in the State of Arkansas;

(2) "Qualified medical director" means a licensed physician who is the medical director of any inpatient or outpatient respiratory care service, department, home care agency, or long-term care facility;

(3)(A) "Respiratory care" means the practice of the principles, techniques, psychology, and theories of cardiopulmonary medicine under the verbal or written direction or prescription of a licensed physician or under the supervision of a qualified medical director, or both.

(B) Respiratory care shall include, but not be limited to, the following:

(i) Evaluation and treatment of individuals whose cardiopulmonary functions have been threatened or impaired by developmental defects, the aging process, physical injury or disease, or anticipated dysfunction of the cardiopulmonary system;

(ii) Evaluation techniques, including cardiopulmonary function assessment, gas exchange evaluation, the need and effectiveness of therapeutic modalities and procedures, and assessment and evaluation of the need for extended care and home care procedures and equipment; and

(iii)(a) The professional application of techniques, equipment, and procedures involved in the administration of respiratory care, such as:

(1) Therapeutic gas administration;

(2) Prescribed medications;

(3) Emergency cardiac, respiratory, and cardiopulmonary resuscitation measures;

(4) Establishing and maintaining artificial airways;

(5) Cardiopulmonary function tests;

(6) Testing and obtaining physiological evaluation of arterial and venous blood samples;

(7) Exercises designed for the rehabilitation of the cardiopulmonary handicapped;

(8) Maintaining postural drainage, vibration and chest percussion, aerosol administration, breathing exercises, and artificial and mechanical ventilation; and

(9) Cleaning and sterilization of cardiopulmonary function equipment and its maintenance.

(b) Those techniques may be applied in the treatment of the individual or patient in groups or through healthcare facilities, organizations, or agencies; and

(4) "Respiratory care practitioner" means a licensed person who practices respiratory care as defined in this chapter under the prescription and direction of a licensed physician.

History. Acts 1969, No. 168, § 1; A.S.A. 1947, § 72-1601; Acts 1987, No. 952, § 1; 1995, No. 1094, § 1; 2001, No. 1049, § 2; 2019, No. 386, § 55.

Amendments. The 2019 amendment repealed former (1) and (2).

SUBCHAPTER 2 — REGULATORY AGENCIES

SECTION.

17-99-201. Medical board — Powers and duties.

SECTION.

17-99-205. Continuing education.

17-99-201. Medical board — Powers and duties.

(a) The Arkansas State Medical Board shall administer the provisions of this chapter.

(b) The board, with the advice and assistance of the Arkansas State Respiratory Care Examining Committee, shall:

- (1) Pass upon the qualifications of applicants for licensure;
- (2) Provide for a nationally standardized examination;
- (3) Determine the applicants who successfully pass the examinations; and
- (4) License those applicants who meet the qualifications provided in this chapter.

(c) In addition to the other powers and duties set out elsewhere in this chapter, the board shall:

- (1) Adopt and put into effect rules to carry this chapter into effect;
- (2) Investigate reported violations of this chapter, and take such steps as may be necessary to enforce the chapter;
- (3)(A) Keep a record of its proceedings and a record of all persons registered under this chapter.

(B) The register shall show:

- (i) The name of every registrant;
- (ii) His or her last known place of business;
- (iii) His or her last known place of residence; and
- (iv) The date and number of his or her license;
- (4)(A) Compile a list, which shall be printed annually, of all respiratory care practitioners who are licensed to practice respiratory care in the State of Arkansas.

(B) It shall furnish a copy of the list to all persons requesting it upon the payment of such fee as may be fixed by the board to compensate for the cost of printing the list;

(5)(A) With the advice and assistance of the committee, adopt rules for the issuance of temporary permits for students and graduates of approved training programs to practice limited respiratory care under the supervision of a respiratory care practitioner or physician.

(B) Rules shall be adopted defining for the purposes of this chapter the terms “students”, “limited”, “supervision”, and “approved training programs”; and

(6) With the advice and assistance of the committee, adopt rules for the issuance of licenses for respiratory care practitioners and put them into effect.

History. Acts 1969, No. 168, §§ 2, 6; A.S.A. 1947, §§ 72-1602, 72-1606; Acts 1987, No. 952, §§ 2, 4; 1995, No. 1094, § 2; 2019, No. 315, §§ 1643, 1644.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (c)(1), (c)(5)(A), (c)(5)(B), and (c)(6).

17-99-205. Continuing education.

The Arkansas State Medical Board, in cooperation with the Arkansas Society for Respiratory Care, Inc., shall develop and implement rules for continuing education.

History. Acts 1969, No. 168, § 20, as added by Acts 1987, No. 952, § 16; 2001, No. 1049, § 1; 2019, No. 315, § 1645.

Amendments. The 2019 amendment deleted “and regulations” following “rules”.

SUBCHAPTER 3 — LICENSING

SECTION.

17-99-302. Qualifications and examination of applicants — Fees — Waiver.

SECTION.

17-99-304. Reciprocity.

17-99-307. Denial, suspension, or revocation — Grounds.

17-99-302. Qualifications and examination of applicants — Fees — Waiver.

(a) The Arkansas State Medical Board shall register as a respiratory care practitioner and shall issue a license to:

(1) Any person who satisfactorily passes the examination provided for in this chapter, and who otherwise meets the requirements for qualification contained herein and pays a fee not to exceed one hundred fifty dollars (\$150);

(2) Any person who furnishes sufficient and satisfactory written evidence to the Arkansas State Medical Board that the person has received registration or certification, or both, by the National Board for Respiratory Care, Inc. or its successor organization and who, at the time of his or her application, shall pay the Arkansas State Medical Board a fee not to exceed one hundred fifty dollars (\$150); and

(3)(A) Any person, whether or not he or she has passed the examination provided for in this chapter, who through a notarized affidavit submitted to the Arkansas State Medical Board by January 1, 2002, demonstrates that he or she has been engaged in the practice of respiratory care for at least two (2) years during the three (3) consecutive years before September 1, 2001, and who submits an application and a fee not to exceed one hundred fifty dollars (\$150).

(B) Any person licensed under this provision must complete the entry level requirements for certification in respiratory care and, no later than January 1, 2005, must pass the examination provided for in this chapter.

(b) Each applicant shall:

(1) Be at least eighteen (18) years of age;

(2) Have been awarded a high school diploma or its equivalent;

(3) Have satisfactorily completed training in a respiratory care program which has been approved by the Arkansas State Respiratory Care Examining Committee, to include adequate instruction in basic medical science, clinical science, and respiratory care theory and procedures; and

(4) Have passed an examination approved by the Arkansas State Medical Board and the committee, unless exempted by other provisions of this chapter.

(c) All examinations of applicants for a license to practice respiratory care shall be held in designated areas of the state at a time and place published by the Arkansas State Medical Board.

(d) Applicants shall be given written examinations on the following subjects:

- (1) Clinical data;
- (2) Equipment; and
- (3) Therapeutic procedures.

(e) A fee not to exceed the prevailing rate set by the National Board for Respiratory Care, Inc. or its successor organization must accompany the application.

History. Acts 1969, No. 168, §§ 7, 10; A.S.A. 1947, §§ 72-1607, 72-1610; Acts 1987, No. 952, §§ 5, 8; 1993, No. 1219, § 15; 1995, No. 1094, § 5; 2001, No. 1049, §§ 4-6; 2019, No. 990, § 115.

Amendments. The 2019 amendment substituted “shall” for “must” in the introductory language of (b); deleted former (b)(2) and redesignated the remaining subdivisions accordingly.

17-99-304. Reciprocity.

(a) A legally licensed practitioner who has been issued a license to practice respiratory care in another state or territory whose requirements for registration and licensure were at the time of his or her registration or licensure equal to the requirements contained in this chapter may be registered and issued a license by the Arkansas State Medical Board if the state or territory from which the applicant comes accords a similar privilege of registration and licensure to persons registered and licensed in the State of Arkansas by the board.

(b) The issuance of the license by reciprocity by the board shall be at the sole discretion of the board, and the board may provide rules governing such admission as it may deem necessary or desirable.

History. Acts 1969, No. 168, § 11; A.S.A. 1947, § 72-1611; Acts 1987, No. 952, § 9; 2019, No. 315, § 1646.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (b).

17-99-307. Denial, suspension, or revocation — Grounds.

The Arkansas State Medical Board, after due notice and hearing, may revoke, suspend, or refuse to renew any license or permit or place on probation or otherwise reprimand a licensee or permit holder or deny a license to an applicant who:

(1) Is habitually drunk or who is addicted to the use of narcotic drugs;

(2) Is, in the judgment of the board, guilty of immoral or unprofessional conduct;

(3) [Repealed.]

(4) Is guilty, in the judgment of the board, of gross negligence in his or her practice as a respiratory care practitioner;

(5) Has obtained or attempted to obtain registration by fraud or material misrepresentation;

(6) Has treated or undertaken to treat ailments of human beings other than by respiratory care and as authorized by this chapter or who has undertaken to practice independently of the prescription and direction of a licensed physician; or

(7) Has been found to have violated any provisions of this chapter or rules of the Arkansas State Respiratory Care Examining Committee or board.

History. Acts 1969, No. 168, § 13; A.S.A. 1947, § 72-1613; Acts 1987, No. 952, § 11; 1995, No. 1094, § 9; 2019, No. 315, § 1647; 2019, No. 990, § 116.

Amendments. The 2019 amendment

by No. 315 deleted “and regulations” following “rules” in (7).

The 2019 amendment by No. 990 repealed (3).

CHAPTER 100

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-100-104. Exemptions.
17-100-106. Civil penalties.

SECTION.

- 17-100-107. Injunction against unlawful practice.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-100-104. Exemptions.

Nothing in this chapter shall be construed as preventing or restricting:

(1) A physician or surgeon from engaging in the practice of medicine in this state;

(2) A hearing aid dealer from engaging in the business of fitting and selling hearing aids in this state in accordance with § 17-84-101 et seq.;

(3) Any person licensed in this state by any other law from engaging in the profession or occupation for which he or she is licensed;

(4)(A) A person from performing speech-language pathology or audiology services solely within the confines or under the jurisdiction of a public school system if that person holds a valid and current certificate as a speech therapist or speech-language pathologist issued by the Division of Elementary and Secondary Education.

(B) However, without obtaining a license under this chapter, such a person may consult with or disseminate his or her research findings and other specific information to speech-language pathologists and audiologists outside the jurisdiction of the school district by which he or she is employed. Such a person may also offer lectures to the public for a fee, monetary or other, without being licensed under this chapter.

(C) The person may additionally elect to be subject to this chapter;

(5) The activities and services of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university, if the activities and services constitute a part of a supervised course of study and if the persons are designated as speech-language pathology interns, speech-language pathology trainees, audiology interns, audiology trainees, or by other such titles clearly indicating the training status appropriate to their level of training;

(6)(A) The performance of speech-language pathology or audiology services in this state by any person not a resident of this state who is not licensed under this chapter, if the services are performed for no more than five (5) days in any calendar year and in cooperation with a speech-language pathologist or audiologist licensed under this chapter and if the person meets the qualifications and requirements for application for licensure described in § 17-100-302(b).

(B) The performance of speech-language pathology or audiology services in this state by a person not a resident of this state who is not licensed under this chapter, but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by § 17-100-302(b), or who is the holder of the American Speech-Language-Hearing Association certificate of clinical competence in speech-language pathology or audiology or its equivalent, if such services are performed in the state for no more than thirty (30) days in any fiscal year and are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter;

(7) A person from performing speech-language pathology or audiology services solely within the confines of the person's duties as an employee of the State of Arkansas, provided that the person was an employee of the State of Arkansas on January 1, 1993, and, furthermore, this exemption applies to such state employees who subsequently transfer to another agency of the state; or

(8)(A) A person from performing speech-language pathology services solely within the confines of the person's duties as an employee of any entity licensed or certified as a developmental disability services community provider by the Division of Developmental Disabilities Services, if that person holds a minimum of a bachelor's degree in speech-language pathology and is supervised by a licensed speech-language pathologist.

(B) The supervision of the bachelor's level personnel shall be in accordance with the rules adopted by the Board of Examiners in Speech-Language Pathology and Audiology.

(C) The board shall adopt rules that set forth the scope and restrictions relating to bachelor's level personnel.

(D) These persons shall be required to comply with state rules as speech-language pathology support personnel no later than January 1, 1997.

History. Acts 1975, No. 277, § 9; 1980 (1st Ex. Sess.), No. 44, § 1; A.S.A. 1947, § 72-1809; Acts 1993, No. 121, § 4; 1995, No. 826, § 3; 2013, No. 219, § 2; 2019, No. 315, § 1648; 2019, No. 910, § 2251.

Amendments. The 2019 amendment

by No. 315 substituted "rules" for "regulations" in (8)(D).

The 2019 amendment by No. 910 substituted "Division of Elementary and Secondary Education" for "Department of Education" in (4)(A).

17-100-106. Civil penalties.

(a) Any person who, after notice and hearing, is found by the Board of Examiners in Speech-Language Pathology and Audiology to have violated any provision of this chapter or any rule of the board may be assessed a civil penalty not to exceed one thousand dollars (\$1,000) for each violation.

(b) The penalty provided for in this section, plus interest at ten percent (10%) per annum, shall be paid to the board before the speech-language pathologist or audiologist can be issued a license to engage in practice in this state.

(c) The board shall have the authority to withhold approval for up to six (6) months of any application for any person who before approval of the application has been found in violation of this chapter.

(d) The board shall have the authority to file suit in the Pulaski County Circuit Court or the circuit court of the county in which the person resides to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service on the person of the order assessing the penalty, unless the circuit court enters a stay pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1993, No. 121, § 5; 2019, No. 315, § 1649. deleted “or regulation” following “rule” in (a).
Amendments. The 2019 amendment

17-100-107. Injunction against unlawful practice.

When any person not licensed by the Board of Examiners in Speech-Language Pathology and Audiology, or any licensee, engages in the practice of speech-language pathology or audiology as defined in § 17-100-103 in violation of this chapter or the rules of the board, the board may go into the Pulaski County Circuit Court or the circuit court of the county in which the person resides and, upon affidavit, secure a writ of injunction, without bond, restraining and prohibiting the person from the practice of speech-language pathology or audiology in violation of this chapter.

History. Acts 1993, No. 121, § 5; 2019, No. 315, § 1650; 2019, No. 386, § 56. leted “herein” preceding “defined”, inserted “§ 17-100-103 in”, deleted “and regulations” following “rules”, and substituted “may go” for “shall have the authority to go”.
Amendments. The 2019 amendment by No. 315 deleted “and regulations” following “rules”.
The 2019 amendment by No. 386 substituted “engages” for “shall engage”, de-

SUBCHAPTER 2 — BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

- SECTION.

17-100-201. Creation — Members.

17-100-202. Powers and duties.

17-100-204. Director.
- SECTION.

17-100-206. Disposition of funds — Reports.

17-100-207. Audiologists — Licensing.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-100-201. Creation — Members.

(a) There is established the Board of Examiners in Speech-Language Pathology and Audiology within the Department of Health.

(b)(1)(A) The board shall be composed of seven (7) members appointed by the Governor to three-year terms.

(B) The members of the board shall be residents of this state for at least two (2) years immediately preceding their appointments.

(2)(A)(i) Five (5) members of the board shall be appointed by the Governor after consulting the Arkansas Speech-Language-Hearing Association, Inc., the American Academy of Audiology, and other professional groups or individuals and subject to confirmation by the Senate.

(ii) The Governor shall appoint a new member of the board if a vacancy occurs.

(B) The board shall have the following professional members:

(i) Two (2) speech-language pathologists;

(ii) Two (2) audiologists; and

(iii) A fifth member who shall be either a speech-language pathologist or an audiologist.

(C) There shall be one (1) consumer member who shall not be actively engaged in the practice of speech-language pathology or audiology.

(3)(A) One (1) member of the board shall represent the elderly.

(B) The representative of the elderly shall:

(i) Be sixty (60) years of age or older;

(ii) Not be actively engaged in or retired from the practice of speech-language pathology or audiology;

(iii) Be appointed from the state at large, subject to confirmation by the Senate; and

(iv) Be a full voting member but shall not participate in the grading of examinations.

(4) The consumer representative position and the representative of the elderly position may not be filled by the same person.

(c) A person shall not be eligible to serve more than two (2) full consecutive terms.

(d) Board members may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1975, No. 277, §§ 3, 6; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 72-1803, 72-1806; Acts 1993, No. 121, § 6; 1997, No. 250, § 172; 2001, No. 1553, § 27; 2013, No. 219, §§ 3, 4; 2015, No. 1100, § 43; 2017, No. 540, § 34; 2019, No. 910, § 4905.

Amendments. The 2019 amendment rewrote (a), which formerly read: "There is established as an independent agency of the executive branch of the government of the State of Arkansas the Board of Examiners in Speech-Language Pathology and Audiology".

17-100-202. Powers and duties.

(a) The Board of Examiners in Speech-Language Pathology and Audiology shall administer, coordinate, and enforce the provisions of this chapter and evaluate the qualifications and supervise the examinations of applicants for licensure under this chapter. The board may

issue subpoenas, examine witnesses, and administer oaths and, at its discretion, shall investigate allegations or practices violating the provisions of this chapter.

(b)(1) The board shall adopt rules relating to professional conduct commensurate with the policy of this chapter, including, but not limited to, rules which establish ethical standards of practice necessary to the enforcement and orderly administration of this chapter and, for other purposes, may amend or repeal the same in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) The board shall promulgate rules regarding the use of speech-language pathology support personnel by practitioners of speech-language pathology.

(3)(A) All rules promulgated pursuant to this section shall be reviewed by the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(B) Following their adoption, the rules shall govern and control the professional conduct of every person who holds a license to practice speech-language pathology or audiology in this state.

(c) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to the authority and procedure of the board.

(d) The board shall conduct hearings and keep records and minutes necessary to the orderly dispatch of its functions. The board shall provide notice to the appropriate persons in a manner it considers appropriate of the times and places of all hearings authorized by this subsection.

(e) The conferral or enumeration of specific powers elsewhere in this chapter shall not be construed as a limitation of the general functions conferred by this section.

History. Acts 1975, No. 277, § 4; A.S.A. 1947, § 72-1804; Acts 1993, No. 121, § 7; 1995, No. 826, § 2; 1997, No. 179, § 16; 2019, No. 315, § 1651.

Amendments. The 2019 amendment, in (b)(1), deleted “and regulations” follow-

ing “adopt rules” and substituted “rules which establish” for “regulations which establish”; substituted “rules” for “regulations” in (b)(2); and deleted “and regulations” following “rules” in (b)(3)(A) and (b)(3)(B).

17-100-204. Director.

(a) The Board of Examiners in Speech-Language Pathology and Audiology may employ and discharge, in consultation with the Secretary for the State Board of Health, a Director of the Board of Examiners in Speech-Language Pathology and Audiology as may be necessary to carry out the duties of the board.

(b) The board shall outline duties and fix compensation of the director in accordance with law.

(c) The amount of per diem and mileage and expense moneys paid to the director shall be in accordance with applicable law.

History. Acts 1975, No. 277, § 5; A.S.A. 1947, § 72-1805; Acts 2019, No. 910, § 4906.

Amendments. The 2019 amendment rewrote the section.

17-100-206. Disposition of funds — Reports.

(a) All fees and other funds received by the Board of Examiners in Speech-Language Pathology and Audiology shall be deposited into a bank account in the name of the board in one (1) or more banks in this state and shall be used by the board exclusively for payment to the Department of Health of reasonable and necessary salaries, maintenance, and operating expenses in the performance of duties imposed on the board under the provisions of this chapter or the payment of the salary of the Director of the Board of Examiners in Speech-Language Pathology and Audiology.

(b) The board shall report monthly to the Department of Health and the Department of Finance and Administration the amount and source of all revenue received by it pursuant to this chapter during the preceding month.

(c) All appropriate expenses incurred by the board in the administration of the provisions of this chapter shall be paid when vouchers relating to such expenses are exhibited as having been approved by the board.

(d)(1) The board shall be financed from income accruing from fees, licenses, and other income collected by the board.

(2) All expenses, which may include full or partial financing of continuing professional education programs adopted by the board under § 17-100-306, and the salary of the director shall be paid as budgeted after budgets are approved or within the limitations of any appropriation for that purpose that may be included in any appropriate Arkansas appropriations law.

(3) All employee salary reimbursement amounts shall be determined by the Department of Health and shall be paid as budgeted after budgets are approved or within the limitations of any appropriation for that purpose that may be included in any appropriate Arkansas appropriations law.

(e) The board will have the authority to establish and change fees for application, examination, renewal, inactivation, reactivation, and delinquency purposes.

History. Acts 1975, No. 277, §§ 5, 17; A.S.A. 1947, §§ 72-1805, 72-1817; Acts 2013, No. 219, § 5; 2019, No. 910, § 4907.

Amendments. The 2019 amendment, inserted “to the Department of Health” and “or the payment of the salary of the Director of the Board of Examiners in

Speech-Language Pathology and Audiology” in (a); inserted “Department of Health and the” in (b); and in (d), deleted “employee salaries and other” following “All” and inserted “and the salary of the director” in (2), and added (3).

17-100-207. Audiologists — Licensing.

(a) Notwithstanding § 17-84-101 et seq. or any other law to the contrary, a person who is licensed by the Board of Examiners in

Speech-Language Pathology and Audiology under § 17-100-301 et seq. as an audiologist in this state shall not be required to be licensed by the Arkansas Board of Hearing Instrument Dispensers.

(b) The Board of Examiners in Speech-Language Pathology and Audiology shall promulgate rules governing the dispensing of hearing aids by audiologists licensed by the Board of Examiners in Speech-Language Pathology and Audiology, provided that such rules shall be no less stringent than the rules adopted by the Arkansas Board of Hearing Instrument Dispensers for the dispensing of hearing aids.

History. Acts 1991, No. 1171, § 1; substituted “rules” for “regulations” three times in (b).
2013, No. 219, § 6; 2019, No. 315, § 1652.

Amendments. The 2019 amendment

SUBCHAPTER 3 — LICENSING

SECTION.

17-100-302. Eligibility.

17-100-307. Denial, suspension, revocation, or other disciplinary action — Reinstatement.

17-100-302. Eligibility.

(a) The Board of Examiners in Speech-Language Pathology and Audiology shall issue a license to a person who meets the requirements of this chapter and pays to the board the application for initial license fee prescribed in § 17-100-308.

(b) To be eligible for licensure by the board as a speech-language pathologist or audiologist, a person shall:

(1) Possess at least a master’s degree in the area of speech-language pathology or a master’s degree in audiology obtained on or before December 30, 2006, or a doctoral degree obtained after January 1, 2007, from an educational institution recognized by the board;

(2) Submit evidence of the completion of the educational, clinical experience, and employment requirements, which shall be based on appropriate national standards and prescribed by the rules adopted under this chapter; and

(3) Pass an examination approved by the board before the board approves a license.

(c) The board shall issue a provisional license to a person who meets the requirements of this chapter, submits the appropriate application, and pays to the board the application for initial license fee prescribed in § 17-100-308.

(d) To be eligible for provisional licensure by the board as a speech-language pathologist or audiologist, a person shall:

(1) Possess at least a master’s degree in the area of speech-language pathology or audiology, as the case may be, from an educational institution recognized by the board;

(2) Be in the process of completing the postgraduate professional experience requirement; and

(3) Pass an examination approved by the board.

(e) The purpose of a provisional license is to permit a person to practice speech-language pathology or audiology while completing the postgraduate professional experience as required by this chapter. A person holding a provisional license is authorized to practice speech-language pathology or audiology only while working under the supervision of a person fully licensed by this state in accordance with this chapter.

(f) The board shall have the authority to adopt rules regarding the term and conditions for which a provisional license is granted.

History. Acts 1975, No. 277, §§ 10, 14; A.S.A. 1947, §§ 72-1810, 72-1814; Acts 1993, No. 121, § 10; 2013, No. 219, § 7; 2019, No. 315, § 1653; 2019, No. 990, §§ 117, 118.

by No. 315 deleted “and regulations” following “rules” in (f).

The 2019 amendment by No. 990 deleted former (b)(1) and (d)(1) and redesignated the remaining subdivisions accordingly.

Amendments. The 2019 amendment

17-100-307. Denial, suspension, revocation, or other disciplinary action — Reinstatement.

(a) The Board of Examiners in Speech-Language Pathology and Audiology may refuse to issue or renew a license or may suspend or revoke a license when the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct may result from, but not necessarily be limited to:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(2) Being guilty of unprofessional conduct as defined by the rules established by the board or violating the code of ethics adopted and published by the board;

(3)(A) Being convicted of a felony listed under § 17-3-102.

(B) At the direction of the board, and after due notice and an administrative hearing in accordance with the provisions of applicable Arkansas laws, the license of the person so convicted shall be suspended or revoked or the board shall decline to issue a license when:

(i) The time for appeal has elapsed;

(ii) The judgment of conviction has been affirmed on appeal; or

(iii) An order granting probation has been made suspending the imposition of sentence, without regard to a subsequent order under the provisions of state law allowing the withdrawal of a guilty plea and the substitution of a not guilty plea, or the setting aside of a guilty verdict, or the dismissal of the acquisition, information, or indictment;

(4) Violating any lawful order or rule rendered or adopted by the board; or

(5) Violating any provision of this chapter.

(b) The board shall deny any application for, or issue a letter of reprimand, or censure, suspend, revoke, or impose probationary conditions upon, the license or licensee as ordered by the board in any decision made after a hearing as provided in this chapter.

(c)(1) No sooner than five (5) years after the date of revocation of a license under this section, an applicant may again apply for licensure.

(2) The board may accept or reject an application for licensure under this section and may impose additional requirements.

History. Acts 1975, No. 277, § 15; A.S.A. 1947, § 72-1815; Acts 2013, No. 219, § 11; 2019, No. 315, § 1654; 2019, No. 990, § 119.

Amendments. The 2019 amendment by No. 315 substituted “or rule” for “rule, or regulation” in (a)(4).

The 2019 amendment by No. 990, in (a)(3)(A), inserted “listed under § 17-3-102” and deleted “in any court of the

United States if the acts for which the licensee or applicant is convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of a speech language pathologist or audiologist” following “§ 17-3-102”; and deleted former (a)(3)(B) and redesignated the remaining subdivisions accordingly.

CHAPTER 101

VETERINARIANS AND VETERINARY TECHNICIANS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. VETERINARY MEDICAL EXAMINING BOARD.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-101-102. Definitions.

17-101-102. Definitions.

As used in this chapter:

(1) “Accredited or approved college of veterinary medicine” means any veterinary college or any division of a university or college that offers the degree of Doctor of Veterinary Medicine, or its equivalent, and that conforms to the standards required for accreditation or approval by the American Veterinary Medical Association;

(2) “Animal” means any member of the animal kingdom, other than humans, whether living or dead;

(3) “Direct supervision” or “direct personal supervision” means the licensed veterinarian must be on-site and instantly available for consultation;

(4) “Educational Commission for Foreign Veterinary Graduates Certificate” means a certificate issued by the American Veterinary Medical Association Educational Commission for Foreign Veterinary Graduates indicating that the holder has demonstrated knowledge and skills

equivalent to those possessed by a graduate of an accredited or approved college of veterinary medicine;

(5) "Immediate supervision" means observation, in the immediate vicinity, with the opportunity for the licensed veterinarian to advise or physically intervene in each procedure;

(6)(A) "Indirect supervision" means the licensed veterinarian is not physically present but has given written or oral instructions for the treatment of the animal and is readily available for communication either in person or through use of electronic information and communication technology.

(B) "Indirect supervision" does not include the administration of a Schedule II controlled substance.

(C) A veterinarian shall retain control of and authority over the care of the animal during indirect supervision;

(7) "Licensed veterinarian" means a person who is validly and currently licensed to practice veterinary medicine in this state as a general practitioner or in a specialty area as the Veterinary Medical Examining Board may by rule provide;

(8) "Person" means any individual, firm, partnership, association, joint venture, cooperative, or corporation, or any other group or combination acting in concert, and whether or not acting as principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative, or as the successor in interest, assigning agent, factor, servant, employee, director, officer, or any other representative of such a person;

(9) "Practice of veterinary medicine" means:

(A) The diagnosis, treatment, correction, change, relief, or prevention of animal disease, deformity, defect, injury, or other physical or mental condition, including the prescribing or administration of any prescription drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique on any animal, including, but not limited to, acupuncture, dentistry, animal psychology, animal chiropractic, theriogenology, surgery, including cosmetic surgery, any manual, mechanical, biological, or chemical procedure for testing for pregnancy or for correcting sterility or infertility or to tender service or recommendations with regard to any of the above;

(B) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subdivision (9)(A) of this section;

(C) The use of any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subdivision (9)(A) of this section. Such use shall be prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine; and

(D) Collecting blood or other samples for the purpose of diagnosing disease or other conditions. This shall not apply to:

(i) Unlicensed personnel employed by the United States Department of Agriculture or the Arkansas Livestock and Poultry Commis-

sion in disease control programs carried out under the authority of the United States Department of Agriculture or the State of Arkansas; and

(ii) Veterinary technicians or veterinary technologists acting under the indirect supervision of a veterinarian as set forth in § 17-101-306(d) except for collecting samples for state or federal tests requiring that the licensed veterinarian draw the sample;

(10) "Veterinarian" means a person who has received a professional degree from a college of veterinary medicine or any person who is licensed to practice veterinary medicine in this state;

(11) "Veterinarian-client-patient relationship" means:

(A) The veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the client, that is, the owner or caretaker, has agreed to follow the instruction of the veterinarian;

(B)(i) There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal.

(ii) This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal, by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and

(C) The practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen or therapy;

(12) "Veterinary medicine" includes veterinary surgery, theriogenology, dentistry, acupuncture, animal psychology, chiropractic, and all other branches or specialties of veterinary practice;

(13) "Veterinary premises" means any place or unit from which the practice of veterinary medicine is conducted;

(14) "Veterinary technician" means a person who:

(A) Has received an associate degree or its equivalent from a college-level program accredited by the American Veterinary Medical Association; and

(B) Provides veterinary services under the supervision and direction of a licensed veterinarian who is responsible for the performance of that veterinary technician;

(15) "Veterinary technician specialist" means a veterinary technician or veterinary technologist who has completed a formal process of education, training, experience, and testing through a specialty academy approved by the Committee on Veterinary Technician Specialties of the National Association of Veterinary Technicians in America;

(16) "Veterinary technologist" means a person who performs veterinary technology services and is a graduate of a four-year baccalaureate program accredited by the American Veterinary Medical Association; and

(17)(A) "Veterinary technology" means the performance of all aspects of medical care, services, and treatment of an animal where a veterinary-client-patient relationship has been established.

(B) “Veterinary technology” does not include diagnosis, prognosis, surgery, or the prescription of appliances, drugs, medications, or treatment unless otherwise determined by the board.

(C) A veterinarian shall retain control of and authority over the care of the animal during the practice of veterinary technology.

History. Acts 1975, No. 650, § 2; A.S.A. 1947, § 72-1133; Acts 1987, No. 60, § 1; 1993, No. 1198, § 1; 2001, No. 1741, § 1; 2019, No. 169, § 1; 2019, No. 315, § 1655; 2019, No. 386, § 57.

Amendments. The 2019 amendment by No. 169, in (2), substituted “member of the animal kingdom” for “animal”, and “humans, whether” for “man, and includes fowl, birds, fish, and reptiles, whether wild or domestic”; deleted (3); redesignated former (4) through (6) as (3) through (5); inserted “licensed” in (3); substituted “licensed” for “supervising” in (5); inserted (6); substituted “Veterinary

Medical Examining Board” for “board” in (7); in (9)(D)(ii), substituted “veterinary technologists” for “assistants”, “indirect” for “direct”, “samples” for “blood”, and “§ 17-101-306(d)” for “§ 17-101-306(b) and (e)”; redesignated former (11)(B) as (11)(B)(i) and (11)(B)(ii); substituted “an associate degree” for “a diploma” in (14)(A); inserted the second occurrence of “veterinary” in (14)(B); added (15) through (17); and made stylistic changes.

The 2019 amendment by No. 315 substituted “rule” for “regulation” in (7).

The 2019 amendment by No. 386 repealed former (3).

SUBCHAPTER 2 — VETERINARY MEDICAL EXAMINING BOARD

SECTION.

17-101-202. [Repealed.]

17-101-203. Powers and duties.

SECTION.

17-101-204. Director.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-101-202. [Repealed.]

Publisher’s Notes. This section, concerning secretary-treasurer, was repealed by Acts 2019, No. 910, § 112, effective

July 1, 2019. The section was derived from Acts 1975, No. 650, § 3; A.S.A. 1947, § 72-1134; Acts 1993, No. 1198, § 1.

17-101-203. Powers and duties.

The Veterinary Medical Examining Board shall have the power to:

(1) Examine and determine the qualifications and fitness of applicants for a license to practice general veterinary medicine or any specialty area thereof, and the certification of veterinary technicians in Arkansas, and issue, renew, deny, suspend, or revoke licenses or certificates, or otherwise discipline veterinarians or veterinary technicians;

(2) Subpoena witnesses and take testimony bearing on the records of applicants for permits or for licenses to practice veterinary medicine in the State of Arkansas;

(3) Establish annually a schedule of license and permit fees based on the board's financial requirements for the ensuing year;

(4) Conduct investigations into matters brought before the board and proceed on the board's own motion to a hearing or other disciplinary action;

(5) [Repealed.]

(6) Purchase or rent necessary office space, equipment, and supplies;

(7) Promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of this chapter. The board shall make available to interested members of the public copies of this chapter and all rules promulgated by the board;

(8) Examine and evaluate qualifications of education, skill, and experience for certification of a person as a veterinary technician and for annual registration of employment;

(9) Regulate all veterinarians in a corporate practice and prevent corporate or noncorporate holdings from being sold to, directed by, or controlled by a nonveterinarian;

(10)(A) Hold hearings on all matters properly brought before the board and, in connection thereto, administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings.

(B) The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records, or other documentary evidence and commission depositions;

(11) Bring proceedings in the courts for the enforcement of this chapter or any rules made pursuant thereto; and

(12) Promulgate rules:

(A) Limiting the amount of Schedule II narcotics that may be prescribed and dispensed by licensees of the board; and

(B) Outlining the use of telehealth and telemedicine in the practice of veterinary medicine.

History. Acts 1975, No. 650, § 4; A.S.A. 1947, § 72-1135; Acts 1987, No. 60, § 2; 1993, No. 1198, § 1; 2017, No. 820, § 12; 2019, No. 315, §§ 1656, 1657; 2019, No. 910, § 113; 2021, No. 130, § 1.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" twice in (7) and in (11).

The 2019 amendment by No. 910 repealed (5).

The 2021 amendment added (12)(B); and redesignated former provisions of (12) as (12)(A).

17-101-204. Director.

The Secretary of the Department of Agriculture may employ a Director of the Veterinary Medical Examining Board.

History. Acts 2019, No. 910, § 114.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-101-301. Veterinarians — Application — Qualifications.
- 17-101-304. Veterinarians — Temporary permit.
- 17-101-305. Veterinarians — Denial, suspension, or revocation of license.
- 17-101-306. Veterinary technician, veterinary technologist, and veterinary technician specialist — Certification.
- 17-101-307. License required — Exemptions.
- 17-101-308. Veterinary technicians — Denial, suspension, or revocation of certificate.
- 17-101-309. License, certificate, and registration renewal — Reinstatement.

SECTION.

- 17-101-310. Continuing education required — Exemptions.
- 17-101-311. Civil penalty — Appeals and disposition of funds.
- 17-101-312. Unlawful practice — Penalties — Injunctions.
- 17-101-313. Abandoned animals.
- 17-101-314. Practicing without a license — Board penalties.
- 17-101-315. Equine teeth floating.
- 17-101-317. Veterinary technologist and veterinary technician specialist — Grounds for denial, suspension, or revocation.
- 17-101-318. Veterinarians — Restricted license.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-101-301. Veterinarians — Application — Qualifications.

(a) Any veterinarian or licensed veterinarian desiring a license to practice veterinary medicine in this state may make written application to the Veterinary Medical Examining Board showing that he or she is:

- (1) At least twenty-one (21) years of age; and

(2) A person of moral integrity and acceptable ethical standards.

(b) The application for licensure to practice veterinary medicine in the State of Arkansas shall:

(1) Be written;

(2) Be signed by the applicant;

(3) Be submitted to the board at least thirty (30) days before the exam;

(4) Be accompanied by a nonrefundable application fee established by the board; and

(5) Include, but not be limited to, the information set forth below:

(A) A current photograph of the applicant;

(B) A certified transcript of the applicant's veterinary school records;

(C) A copy of the applicant's diploma from an accredited veterinary school or an affidavit from the dean of an accredited veterinary school certifying the applicant's ability to graduate if he or she has not graduated at the time of application. However, a copy of the diploma must be submitted upon availability and before the exam date;

(D) An Educational Commission for Foreign Veterinary Graduates Certificate or an equivalent program approved by the board, if applicable; and

(E)(i) A National Board Exam score and Clinical Competency Test score or the North American Veterinary Licensing Examination score, or its future equivalent, reported through the Veterinary Information Verification Agency, or its future equivalent.

(ii) The Clinical Competency Test is not required for a poultry specialty license.

(c)(1) The board by rule may require that all applicants for licensure by examination complete a preceptorship program during their senior year under the supervision of a veterinarian licensed and in good standing in any state, territory, or district of the United States.

(2) The supervising veterinarian shall submit an affidavit to the board stating that the applicant has satisfactorily completed the preceptorship.

(d)(1) If the board finds that the applicant possesses the proper qualifications, it shall admit him or her to the next examination.

(2) If an applicant is found unqualified to take the examination or to receive a license without examination, the board shall immediately notify the applicant in writing of its findings and the grounds for same.

History. Acts 1975, No. 650, § 5; A.S.A. 1947, § 72-1136; Acts 1993, No. 1198, § 1; 1993 No. 1219, § 27; 2001, No. 1741, § 3; 2019, No. 315, § 1658.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (c)(1).

17-101-304. Veterinarians — Temporary permit.

(a) The Director of the Veterinary Medical Examining Board may issue without examination a temporary permit to practice veterinary

medicine in this state to a qualified applicant for a license pending examination and provided that the temporary permit shall expire the day after the notice or results of the first examination given after the permit is issued.

(b) A temporary permit may be issued or revoked by majority vote of the Veterinary Medical Examining Board.

History. Acts 1975, No. 650, § 8; A.S.A. 1947, § 72-1139; Acts 1993, No. 1198, § 1; 2021, No. 130, § 2.

Amendments. The 2021 amendment substituted "Director" for "Secretary-treasurer" in (a).

17-101-305. Veterinarians — Denial, suspension, or revocation of license.

(a) Upon written complaint by any person or on the Veterinary Medical Examining Board's own motion and after notice and hearing as prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the board may deny, suspend for a definite period, or revoke the license of any veterinarian, and/or impose a civil penalty for:

(1) Fraud, misrepresentation, or deception in obtaining a license or permit;

(2) Adjudication of insanity;

(3) Use of advertising or solicitation which is false, misleading, or otherwise deemed unprofessional under rules promulgated by the board;

(4)(A) Conviction of a felony listed under § 17-3-102.

(B) A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence;

(5) Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine;

(6) Having professional association with or employing any person practicing veterinary medicine unlawfully;

(7) Fraud or dishonesty in the application or reporting of any test for disease in animals;

(8) Failure to maintain professional premises and equipment in a clean and sanitary condition in compliance with rules promulgated by the board;

(9) Dishonesty or gross negligence in the inspection of foodstuffs or in the issuance of health or inspection certificates;

(10) Cruelty to animals;

(11) Unprofessional conduct by violation of a rule promulgated by the board under this chapter;

(12) Being unable to practice as a veterinarian with reasonable skill and safety to patients because of illness, the use of drugs, alcohol, narcotics, or chemicals, or as a result of any mental or physical condition;

(13) Revocation, suspension, surrender, or other disciplinary sanction of a license to practice veterinary medicine by another state, territory, or district of the United States on grounds other than nonpayment of a registration fee or suspension of privileges by any other regulatory agency including the failure to report any such adverse action to the board within sixty (60) days of the final action;

(14) The use, prescription, or sale of any veterinary prescription drug or the prescription of an extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship;

(15) Overtreating patients or charging for services which did not occur unless the services were contracted for in advance or for services which were not rendered or documented in the patient's records or charging for services which were not consented to by the owner of the patient or the owner's agent;

(16)(A) Failing to furnish details of a patient's medical records to another treating veterinarian, hospital, clinic, owner, or owner's agent upon proper request or waiver by the owner or owner's agent or failing to comply with any other law relating to medical records.

(B) However, X-rays prepared by the licensed veterinarian shall remain the property of the veterinarian and shall be returned upon request or as otherwise agreed between the veterinarian and client;

(17) Failure of any applicant or licensee to cooperate with the board during any investigation, if the investigation does not concern the applicant or licensee;

(18) Failure to comply with any subpoena or subpoena duces tecum from the board, or an order of the board;

(19) Failure to timely pay license or registration renewal fees as specified in § 17-101-309;

(20) Violating a probation agreement with the board or any other licensing authority of this state, another state or territory of the United States, or a federal agency; or

(21) Violating any informal consent agreement for discipline entered into by an applicant or licensee with the board or any other licensing authority of this state, another state or territory of the United States, or a federal agency.

(b) At the discretion of the board, any person whose license is suspended or revoked by the board under this section may be relicensed or reinstated by the board at any time upon written application to the board showing cause to justify relicensing or reinstatement.

(c)(1) Upon suspension or revocation of a license, the actual license certificate must be surrendered to the board within thirty (30) days of the board's order unless the action is appealed and a stay is issued.

(2) If the board prevails upon appeal or the stay is lifted, the license certificate shall be surrendered within ten (10) days of the final order of the court.

History. Acts 1975, No. 650, § 13; A.S.A. 1947, § 72-1144; Acts 1993, No. 1198, § 1; 1995, No. 1348, § 3; 2001, No. 1741, § 5; 2019, No. 315, §§ 1659-1661; 2019, No. 990, § 120.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regula-

tions" in (a)(3) and (a)(8); and substituted "rule" for "regulation" in (a)(11).

The 2019 amendment by No. 990 substituted "listed under § 17-3-102" for "or other crime involving moral turpitude" in (a)(4)(A).

17-101-306. Veterinary technician, veterinary technologist, and veterinary technician specialist — Certification.

(a) A person shall not assist in the practice of veterinary medicine as a veterinary technician or veterinary technologist without first applying for and obtaining a certification from the Veterinary Medical Examining Board and having his or her employment with a licensed veterinarian registered with the Veterinary Medical Examining Board.

(b)(1) An applicant for certification as a veterinary technician or veterinary technologist in this state may make written application to the Veterinary Medical Examining Board showing that he or she is:

(A) A citizen of the United States or an applicant for citizenship; and

(B) A person of moral integrity and acceptable ethical standards.

(2) The application for certification as a veterinary technician or veterinary technologist in the State of Arkansas shall be written, signed by the applicant, and submitted to the Veterinary Medical Examining Board at least thirty (30) days before the examination, including without limitation the information set forth in this subdivision (b)(2), and the application shall be accompanied by a nonrefundable application fee established by the Veterinary Medical Examining Board:

(A) A current photograph of the applicant;

(B)(i) A copy of the applicant's diploma or its equivalent from a college-level program accredited by the American Veterinary Medical Association.

(ii) If the applicant has not graduated at the time of application, an affidavit from the program certifying the applicant's ability to graduate may be accepted with a copy of the diploma or its equivalent submitted upon availability;

(C) A certified copy of college transcripts;

(D) A passing score on the National Board Examination or Veterinary Technician National Examination, or future equivalent, reported through the American Association of Veterinary State Boards or its successor; and

(E) A letter of recommendation signed by a veterinarian who is licensed in this state or another state, territory, or district of the United States and notarized.

(3) This section does not prevent the Veterinary Medical Examining Board from issuing a certification by endorsement to an applicant who:

(A) Holds a certification, or its equivalent, as a veterinary technician or veterinary technologist in another state, territory, or district of the United States;

(B) Is not a respondent in any pending or unresolved board action in any state, territory, or district of the United States;

(C) Has a passing score on the National Board Examination or Veterinary Technician National Examination, or its future equivalent.

lent, reported through the American Association of Veterinary State Boards or its successor;

(D) Submits a completed application, including without limitation a letter of recommendation that is:

- (i) Signed by a veterinarian;
- (ii) Notarized by a notary public; and
- (iii) Accompanied by a nonrefundable application fee established by the Veterinary Medical Examining Board; and

(E) Signs a statement attesting that he or she has read and understands this chapter and the rules adopted by the Veterinary Medical Examining Board governing the practice of veterinary medicine in Arkansas.

(c)(1) A veterinary technician or veterinary technologist shall annually register his or her employment with the Veterinary Medical Examining Board, stating:

- (A) His or her name and current address;
- (B) The name and office address of both his or her employer and the supervising licensed veterinarian; and
- (C) Any additional information required by the Veterinary Medical Examining Board.

(2) Upon any change of employment as a veterinary technician or veterinary technologist, the certification is inactive until:

- (A) New employment as a veterinary technician or veterinary technologist has been obtained; and
- (B) The Veterinary Medical Examining Board has been notified in writing of the new employment.

(d)(1) A veterinary technician or veterinary technologist shall perform veterinary technology under the direction, supervision, and responsibility of the licensed veterinarian with whom he or she is employed.

(2) Supervision of a veterinary technician or veterinary technologist may be direct supervision, indirect supervision, or immediate supervision.

(3) A veterinarian who utilizes indirect supervision of a veterinary technician or veterinary technologist shall:

- (A) Retain control of and authority over the care of the animal; and
- (B) Review all recordkeeping and notes documented by the veterinary technician or veterinary technologist on the charts regarding the care of the animal.

(e) The Veterinary Medical Examining Board shall promulgate rules to establish the appropriate level of supervision under which a veterinary technician or veterinary technologist can perform veterinary technology.

(f)(1) A licensed veterinarian using, supervising, or employing a veterinary technician or veterinary technologist is individually responsible and liable for the performance of the acts and omissions delegated to the veterinary technician or veterinary technologist.

(2) This subsection does not relieve a veterinary technician or veterinary technologist of any responsibility and liability for any of his or her own acts and omissions.

(g) A licensed veterinarian shall not establish a separate office or clinic in a location other than his or her regular office and place the separate office or clinic under the control or supervision of a veterinary technician or veterinary technologist.

(h)(1) This section does not prevent a licensed veterinarian from utilizing the services of an employee to perform services not requiring the skill and judgment of a veterinary technician, veterinary technologist, or veterinary technician specialist, if the services performed by the employee are under the direct personal supervision of a licensed veterinarian.

(2) An employee described under subdivision (h)(1) of this section shall not be identified as a “veterinary technician”, “animal technician”, “technician”, “veterinary technologist”, “animal technologist”, “technologist”, or “veterinary technician specialist”.

(i) A veterinary technician, veterinary technologist, or veterinary technician specialist shall not receive a fee or other compensation for veterinary services or veterinary technology services other than the salary or other compensation paid to the veterinary technician, veterinary technologist, or veterinary technician specialist by the veterinary clinic, veterinary practice, or veterinarian by which he or she is employed.

(j)(1) The Veterinary Medical Examining Board may issue additional certifications for a veterinary technician specialist.

(2) For an applicant seeking certification as a veterinary technician specialist, the Veterinary Medical Examining Board may require an initial application, application fee as determined by the Veterinary Medical Examining Board, renewal application, renewal application fee as determined by the Veterinary Medical Examining Board, and any other relevant information determined by the Veterinary Medical Examining Board.

History. Acts 1975, No. 650, § 9; A.S.A. 1947, § 72-1140; Acts 1993, No. 1198, § 1; 1995, No. 1348, § 4; 2019, No. 169, § 2; 2019, No. 315, § 1662.

Amendments. The 2019 amendment by No. 169 inserted “veterinary technolo-

gist, and veterinary technician specialist” in the section heading; and rewrote the section.

The 2019 amendment by No. 315 substituted “rules” for “regulations” in (a).

17-101-307. License required — Exemptions.

(a) No person may practice veterinary medicine in this state who is not a licensed veterinarian or the holder of a valid temporary permit issued by the Veterinary Medical Examining Board.

(b) This chapter shall not be construed to prohibit:

(1) Employees of the federal or state government or employees of local government who are certified by an agency approved by the board to perform euthanasia from performing their official duties;

(2) Regular students in a veterinary school or college from performing duties or actions assigned by the school or college or working under the direct personal supervision of a veterinarian licensed in the State of Arkansas;

(3) Reciprocal aid of neighbors in performing routine accepted livestock management practices without compensation;

(4) Any veterinarian licensed in any foreign jurisdiction from consulting with a licensed veterinarian;

(5) The owner of an animal, his or her consignees, and their employees from performing routine accepted livestock management practices in the care of animals belonging to the owner;

(6) A member of the faculty of a veterinary school from performing his or her regular functions or a person from lecturing or giving instruction or demonstration at a veterinary school or in connection with a continuing education course or seminar for licensed veterinarians, veterinary technicians, or veterinary technologists;

(7) A person from engaging in bona fide scientific research that reasonably requires experimentation involving animals;

(8) Any person:

(A) Engaging in the art or profession of horseshoeing;

(B) Training, except that the training shall not include diagnosing, prescribing, or dispensing of any therapeutic agent;

(C) Selling medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases as permitted by law, by any pharmacist, merchant, or manufacturer at his or her regular place of business;

(D) Collecting, preparing, or freezing semen; and

(E) Performing nonsurgical artificial insemination;

(9)(A) Any act, task, or function performed by a veterinary technician or veterinary technologist at the direction of and under the supervision of a licensed veterinarian, when:

(i) The veterinary technician or veterinary technologist is certified by the board as being qualified by training or experience to function as an assistant to a veterinarian;

(ii) The act, task, or function is performed at the direction of and under the supervision of a licensed veterinarian in accordance with rules promulgated by the board; and

(iii) The services of the veterinary technician or veterinary technologist are limited to assisting the veterinarian in the particular fields for which he or she has been trained and certified.

(B) Subdivision (b)(9)(A) of this section shall not limit or prevent any veterinarian from delegating to a qualified person any acts, tasks, or functions which are otherwise permitted by law but which do not include diagnosis, prescribing medication, or surgery;

(10) A chiropractor licensed in this state and certified by the American Veterinary Chiropractic Association or the equivalent thereof from performing chiropractic upon animals;

(11) The practice of veterinary medicine through a program in partnership with federal Innovative Readiness Training if the veteri-

narian or veterinary technician has obtained a license to practice from another state, commonwealth, territory, or the District of Columbia;

(12) A person from practicing or performing equine massage therapy or animal massage therapy; or

(13) An emergency medical services personnel or an emergency medical services provider from transporting an injured police dog as authorized under § 20-13-217.

History. Acts 1975, No. 650, § 14; A.S.A. 1947, § 72-1145; Acts 1993, No. 1198, § 1; 1995, No. 1348, § 5; 2001, No. 1741, § 6; 2011, No. 1031, § 1; 2017, No. 205, § 9; 2019, No. 139, § 1; 2019, No. 169, §§ 3, 4; 2019, No. 286, § 1; 2021, No. 390, § 1; 2021, No. 790, § 1.

Amendments. The 2019 amendment by No. 139 deleted “so long as the chiropractic is performed under the immediate supervision of an Arkansas-licensed veterinarian; or” from the end of (b)(10), and made a stylistic change.

The 2019 amendment by No. 169 substituted “veterinary technicians, or veterinary technologists” for “or registered technicians” in (b)(6); inserted “or veterinary

technologist” in the introductory language of (b)(9)(A), (b)(9)(A)(i), and in (b)(9)(A)(iii); in (b)(9)(A)(i), inserted the first occurrence of “veterinary”, and substituted “the board as being” for “and annually registered with the board as one”; deleted “and registered” from the end of (b)(9)(A)(iii); and made stylistic changes.

The 2019 amendment by No. 286 added (b)(12).

The 2021 amendment by No. 390 inserted “or the equivalent thereof” in (b)(10).

The 2021 amendment by No. 790 added (b)(13).

17-101-308. Veterinary technicians — Denial, suspension, or revocation of certificate.

(a) The Veterinary Medical Examining Board may deny or suspend any registration or deny or revoke any certificate of qualification upon the grounds that the applicant or veterinary technician is guilty of:

(1) Soliciting patients for any practitioner of the veterinary healing arts;

(2) Soliciting or receiving any form of compensation from any person other than his or her registered employer for performing as a veterinary technician;

(3) Willfully or negligently divulging a professional secret or discussing a veterinarian’s diagnosis or treatment without the express permission of the veterinarian;

(4)(A) Any offense punishable by incarceration in the Division of Correction or federal prison.

(B) A copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be conclusive evidence;

(5) Being unable to practice as a veterinary technician with reasonable skill and safety to patients because of illness, the use of drugs, alcohol, narcotics, or chemicals, or as a result of any mental or physical condition;

(6) Fraud or misrepresentation in applying for or procuring:

(A) A certificate of qualification to perform as a veterinary technician in Arkansas; or

(B) An annual registration;

(7) Impersonating another person registered as a veterinary technician or allowing any person to use his or her certificate of qualification or registration;

(8) Aiding or abetting the practice of veterinary medicine by a person not licensed by the board;

(9) Gross negligence in the performance of duties, tasks, or functions assigned to him or her by a licensed veterinarian;

(10) Manifesting incapacity or incompetence to perform as a veterinary technician; or

(11) Conduct unbecoming a person registered as a veterinary technician or detrimental to the best interests of the public.

(b) At the discretion of the board, any person whose certificate of qualification is suspended or revoked by the board under this section may be recertified or reinstated by the board at any time upon written application to the board showing cause to justify recertification or reinstatement.

History. Acts 1975, No. 650, § 13; A.S.A. 1947, § 72-1144; Acts 1993, No. 1198, § 1; 2001, No. 1741, § 7; 2019, No. 910, § 973.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" in (a)(4)(A).

17-101-309. License, certificate, and registration renewal — Reinstatement.

(a)(1) All licenses, certificates, and registrations expire on March 31 each year and may be renewed by payment of the annual renewal fee established by rule of the Veterinary Medical Examining Board.

(2) Not later than March 1 each year, the board shall provide a written notice to each licensed veterinarian, veterinary technician, and veterinary technologist that his or her license or certificate will expire on March 31 and shall provide a renewal application form.

(b)(1) Any person may reinstate an expired license or certificate within five (5) years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees.

(2) After five (5) years have elapsed since the date of expiration, a license or certificate may not be renewed, and the holder must apply for a new license or certificate and take the required examinations.

(c) The board may provide by rule for waiver of payment of any renewal fee of a licensed veterinarian, veterinary technician, or veterinary technologist during any period when he or she is on active duty with any branch of the United States Armed Forces for not to exceed three (3) years or for the duration of a national emergency, whichever is longer.

(d) The board may provide by rule for waiver of payment of any renewal fee of a licensed veterinarian or veterinary technician during any period when he or she is a member of the Arkansas National Guard called into state active duty.

History. Acts 1975, No. 650, § 11; A.S.A. 1947, § 72-1142; Acts 1993, No. 1198, § 1; 2019, No. 169, §§ 5, 6; 2019, No. 315, §§ 1663, 1664; 2019, No. 462, § 17; 2021, No. 130, § 3.

Amendments. The 2019 amendment by No. 169 deleted “and registered” preceding the first occurrence of “veterinary” in (a)(2); inserted “and veterinary technologist” in (a)(2) and (c); deleted “registration” following “license” in (a)(2) one time, in (b)(1) one time, and in (b)(2) twice;

deleted “or registered” preceding the first occurrence of “veterinary” in (c); and made stylistic changes.

The 2019 amendment by No. 315 substituted “rule” for “regulation” in (a)(1) and (c).

The 2019 amendment by No. 462 added (d).

The 2021 amendment substituted “shall provide a written notice” for “shall mail a notice” in (a)(2).

17-101-310. Continuing education required — Exemptions.

(a)(1) A veterinarian, veterinary technician, or veterinary technologist under this chapter is required to attend an educational program in the twelve (12) months preceding each renewal date.

(2) The postgraduate study or attendance at an institution or at an educational session approved by the Veterinary Medical Examining Board shall be considered equivalent to continuing education requirements.

(3) The board shall have the right, for good cause shown, to prescribe the type and character of postgraduate study to be done by any licensed veterinarian in order to comply with the requirements of this chapter.

(b) The board shall excuse licentiates or certificate holders, as a group or as individuals, from the annual educational requirements in any of the following instances:

(1) When no educational program meeting the requirements approved by the board is conducted within the state;

(2) When an affidavit is submitted to the board evidencing that the licensee, for good cause assigned, was prevented from attending an educational program at the proper time;

(3) In the event of an unusual emergency; or

(4) If that person holds an inactive license or certificate.

(c)(1) A veterinarian, veterinary technician, or veterinary technologist shall fulfill his or her annual education requirements at his or her own expense.

(2) The fee for his or her annual education requirements is not included in the license fee.

History. Acts 1975, No. 650, § 12; A.S.A. 1947, § 72-1143; Acts 1993, No. 1198, § 1; 2019, No. 169, § 7.

Amendments. The 2019 amendment redesignated former (c) as (c)(1) and (c)(2); inserted “or veterinary technologist” in

(a)(1) and in (c)(1); inserted “or certificate holders” in the introductory language of (b); inserted “or certificate” in (b)(4); deleted “registration” preceding “fee” in (c)(2); and made stylistic changes.

17-101-311. Civil penalty — Appeals and disposition of funds.

(a)(1) Whenever the Veterinary Medical Examining Board determines that any provision of this chapter or any rule promulgated by the

board pursuant to this chapter has been violated, the board may impose a civil penalty not to exceed five thousand dollars (\$5,000) per violation.

(2) The board may file an action in the Pulaski County Circuit Court to collect any civil penalty not paid within thirty (30) days of service of the order assessing the penalty, unless the circuit court enters a stay of the board's order.

(3) If the board prevails in the action, the defendant shall be directed to pay reasonable attorney's fees and costs incurred by the board in prosecuting the action in addition to the civil penalty.

(b) Any person aggrieved by the action of the board imposing civil penalties may appeal the decision in the manner and under the procedure prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for appeals from administrative decisions.

(c) All funds derived from civil penalties imposed by the board shall be deposited into one (1) or more depositories qualifying for the deposit of public funds. The funds shall be used by the board for administering the provisions of this chapter.

History. Acts 1987, No. 774, §§ 2-4; 1993, No. 1198, § 1; 1995, No. 1348, § 6; 2019, No. 315, § 1665.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (a)(1).

17-101-312. Unlawful practice — Penalties — Injunctions.

(a) Any person who shall practice or attempt to practice veterinary medicine in this state without having been duly licensed in accordance with the provisions of this chapter shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be fined in any sum of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250) for each and every offense or imprisoned for a term of not less than six (6) months nor more than one (1) year, or shall be both fined and imprisoned in the discretion of the court.

(b) Each day of the unlawful practice shall constitute a separate offense.

(c) One-half ($\frac{1}{2}$) of the sums assessed as fines under this chapter shall be paid into the general fund of the county wherein the fine is assessed, and one-half ($\frac{1}{2}$) of the sums assessed as fines under this chapter shall be deposited with the Director of the Veterinary Medical Examining Board and credited to the account of the Veterinary Medical Examining Board.

(d) The unlawful practice of veterinary medicine is declared to be a public nuisance.

(e) In addition to the penalties provided in this section, the board may institute legal proceedings to enjoin the violation of the provisions of this chapter or the rules of the board in any court of competent jurisdiction, and the court may grant a temporary or permanent injunction restraining the violation thereof.

History. Acts 1975, No. 650, § 15; in (c), substituted “wherein the fine is assessed” for “wherein it is assessed” and “Director” for “Secretary-treasurer”.
A.S.A. 1947, § 72-1146; Acts 1993, No. 1198, § 1; 2021, No. 130, § 4.

Amendments. The 2021 amendment,

17-101-313. Abandoned animals.

(a) Unless otherwise provided by contract between the veterinarian and his or her client, a veterinarian may dispose of any animal abandoned in his or her care if he or she gives written notice of his or her intention to do so by sending the notice to the last known physical or email address of the client.

(b) The veterinarian shall allow the client twelve (12) days from the issuance of the notice in which to retrieve the animal.

History. Acts 1993, No. 1198, § 1; email”, and substituted “sending the notice” for “certified mail sent”; in (b), substituted “issuance of the notice” for “mailing of the certified letter” and made a stylistic change.
2021, No. 130, § 5.

Amendments. The 2021 amendment inserted the (a) and (b) designations; in (a), inserted “written” and “physical or

17-101-314. Practicing without a license — Board penalties.

(a)(1)(A) If upon completion of an investigation the Director of the Veterinary Medical Examining Board has probable cause to believe that a veterinarian or an unlicensed person acting as a veterinarian has violated the provisions of this chapter, he or she may issue a citation to the veterinarian or unlicensed person, as provided in this section.

(B) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this chapter alleged to have been violated.

(C) Each citation may also contain an order of abatement fixing a reasonable time for abatement of the violation and may contain an assessment of a civil penalty not to exceed five thousand dollars (\$5,000).

(2) The citation shall be served upon the veterinarian or unlicensed individual personally or by any type of mailing requiring a return receipt.

(b) Before any citation may be issued, the director shall submit the alleged violation for review to at least one (1) member of the board.

(c)(1) Upon conclusion of the board designee’s review, the designee shall prepare a finding of fact and a recommendation.

(2) If the board designee concludes that the veterinarian or unlicensed person has violated any provision of this chapter, a civil citation shall be issued to the veterinarian or unlicensed person.

(d)(1) If a veterinarian or unlicensed person desires to administratively contest a civil citation or the proposed assessment of a civil penalty, he or she shall notify within ten (10) business days after service of the citation the executive officer in writing of his or her request.

(2) Upon receipt of the request, a hearing on the matter shall be scheduled before the board.

(e) Any administrative hearing shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f) In addition to the penalties provided in this section, the board may institute legal proceedings to enjoin the violation of the provisions of this chapter or the rules of the board in any court of competent jurisdiction, and the court may grant a temporary or permanent injunction restraining the violation thereof.

History. Acts 1995, No. 1348, § 7; substituted "Director" for "Executive Secretary" in (a)(1)(A); and substituted "director" for "executive secretary" in (b). 2001, No. 1741, § 8; 2021, No. 130, §§ 6, 7.

Amendments. The 2021 amendment

17-101-315. Equine teeth floating.

(a) The Veterinary Medical Examining Board is prohibited from enforcing board policy regarding equine teeth floating by either investigating or prosecuting an individual practitioner engaged in equine teeth floating until July 1, 2013.

(b)(1) Before engaging in the practice of equine teeth floating in the state, an individual practitioner shall present to the board signed letters of recommendation from two (2) clients who have previously employed the individual practitioner and who bear witness to the individual practitioner's ability to perform equine teeth floating.

(2) The letters of recommendation shall be presented to the board before providing service to a client or performing any procedure on any animal.

History. Acts 2011, No. 1031, § 2; 2019, No. 286, § 2. Deleted "or an individual practitioner practicing equine massage therapy" following the second occurrence of "floating"; and in (b)(1), deleted "or equine massage therapy" following the first occurrence of "floating" and deleted "or equine massage therapy or both" from the end.

Amendments. The 2019 amendment deleted "and equine massage" from the end of the section heading; in (a), deleted "and equine massage therapy" following the first occurrence of "floating" and de-

17-101-317. Veterinary technologist and veterinary technician specialist — Grounds for denial, suspension, or revocation.

(a) Upon written complaint by any person or on the Veterinary Medical Examining Board's own motion and after notice and hearing as prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the board may deny or suspend any certification or deny or revoke any certificate of qualification of the applicant, veterinary technologist, or veterinary technician specialist for the following conduct:

(1) Solicitation of patients on behalf of a veterinarian or veterinary technician;

(2) Solicitation or receiving any form of compensation from any person other than his or her registered employer for his or her employment;

(3) Willful or negligent disclosure of a professional secret or discussing a veterinarian's diagnosis or treatment without the express permission of the veterinarian;

(4)(A) Any offense punishable by incarceration in the Division of Correction or federal prison.

(B) A copy of the record of conviction, certified by the clerk of the court entering the conviction, shall be evidence;

(5) Inability to practice as a veterinary technologist or a veterinary technician specialist with reasonable skill and safety to patients due to illness, the use of drugs, alcohol, narcotics, or chemicals, or as a result of any mental or physical condition;

(6) Fraud or misrepresentation in applying for or procuring:

(A) A certificate of qualification to perform as a veterinary technologist or veterinary technician specialist in Arkansas; or

(B) An annual employment registration;

(7) Impersonation of another person registered as a veterinary technologist or veterinary technician specialist or authorization of any person to use his or her certificate of qualification or registration;

(8) Aids or abets the practice of veterinary medicine by a person not licensed by the board;

(9) Incompetence, gross negligence, or other malpractice in the performance of duties, tasks, or functions assigned to him or her by a licensed veterinarian;

(10) Incapacity or incompetence to perform as a veterinary technologist or veterinary technician specialist;

(11) Cruelty to animals;

(12) Failure:

(A) Of any applicant or licensee to cooperate with the board during any investigation, if the investigation does not concern the applicant or licensee;

(B) To comply with any subpoena or subpoena duces tecum from the board or an order of the board; or

(C) To timely pay certification or renewal fees; or

(13) Unprofessional conduct or conduct that is detrimental to the best interests of the public.

(b) At the discretion of the board, a person whose certificate of qualification is suspended or revoked by the board under this section may be:

(1) Recertified or reinstated by the board at any time upon written application to the board showing cause to justify recertification or reinstatement; and

(2) Subject to civil penalties under § 17-101-311 as determined by the board.

17-101-318. Veterinarians — Restricted license.

(a) The Director of the Veterinary Medical Examining Board may issue a restricted license to a person who has graduated from an accredited or approved college of veterinary medicine but has not passed the North American Veterinary Licensing Exam, or its future equivalent, to engage in the practice of veterinary medicine under the direct supervision of a licensed veterinarian.

(b) A restricted license shall be issued by the Veterinary Medical Examining Board upon the receipt of the following:

(1) A completed application as described in § 17-101-301 and the application fee established by the board, if not previously submitted during the applicant's final year of veterinary school;

(2) A restricted license fee established by the board;

(3) A letter of recommendation from the supervising licensed veterinarian; and

(4) Written confirmation that the applicant is scheduled to take the next available North American Veterinary Licensing Exam, or its future equivalent.

(c) If the applicant fails to pass the North American Veterinary Licensing Exam, or its future equivalent, after receiving a restricted license, the applicant may be issued another restricted license by submitting the following:

(1) The restricted license fee established by the board;

(2) A letter of recommendation from the supervising licensed veterinarian; and

(3) Written confirmation that the applicant is scheduled to take the next available North American Veterinary Licensing Exam, or its future equivalent.

(d)(1) A restricted license shall expire the day after the results of the North American Veterinary Licensing Exam, or its future equivalent, are made known to the applicant.

(2) An applicant shall not be issued more than three (3) restricted licenses.

(e) The applicant is eligible for an unrestricted license to practice veterinary medicine upon receiving a passing score on the North American Veterinary Licensing Exam, or its future equivalent, if all other requirements are met for the unrestricted license.

(f) A restricted licensee shall not apply:

(1) For a United States Drug Enforcement Administration registration; or

(2) To become an accredited veterinarian through the United States Animal and Plant Health Inspection Service.

History. Acts 2021, No. 130, § 8.

CHAPTER 102

ACUPUNCTURISTS

SUBCHAPTER.

2. ARKANSAS STATE BOARD OF ACUPUNCTURE AND RELATED TECHNIQUES.
3. LICENSING.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF ACUPUNCTURE AND RELATED TECHNIQUES

SECTION.

17-102-206. Board duties and powers.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-102-206. Board duties and powers.

(a)(1) The Arkansas State Board of Acupuncture and Related Techniques is empowered to incur whatever expenses it may deem necessary or expedient in performing its functions.

(2) All of the disbursements provided for in this section shall be out of the fees and fines collected by the Arkansas State Board of Acupuncture and Related Techniques.

(b) The Arkansas State Board of Acupuncture and Related Techniques is authorized to:

(1) Make suitable bylaws for carrying out the duties of the Arkansas State Board of Acupuncture and Related Techniques under the provisions of this chapter;

(2) Sue and be sued;

(3) Have an official seal that shall bear the words “Arkansas State Board of Acupuncture and Related Techniques”;

(4)(A) Provide a secretary’s certificate.

(B) The certificate of the Secretary of the Arkansas State Board of Acupuncture and Related Techniques under seal shall be accepted in the courts of the state as the best evidence as to the minutes of the Arkansas State Board of Acupuncture and Related Techniques and shall likewise be accepted in the courts of the state as the best

evidence as to the licensure or nonlicensure of any person under the requirements of this chapter;

(5)(A) Adopt, publish, and, from time to time, revise rules consistent with the law as may be necessary to enable the Arkansas State Board of Acupuncture and Related Techniques to carry into effect the provisions of this chapter.

(B) Within thirty (30) days after the effective date of this act, the Arkansas State Board of Acupuncture and Related Techniques shall promulgate new rules to replace the following existing rules: Title I, Title II, Title III, Title IV, Title V, and Title VI.

(C) All proposed rules after the effective date of this act shall be approved in writing by the Arkansas State Medical Board under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., but before submission to the Administrative Rules Subcommittee of the Legislative Council;

(6) Keep a record of all proceedings, receipts, and disbursements of the Arkansas State Board of Acupuncture and Related Techniques;

(7) Adopt standards for applicants wishing to take the licensing examination and conduct examinations or contract with persons or entities to conduct examinations of applicants;

(8)(A) Grant, deny, renew, suspend, or revoke licenses to practice acupuncture and related techniques for any cause stated in this chapter.

(B) Except as otherwise provided by this chapter, the Arkansas State Board of Acupuncture and Related Techniques shall have exclusive jurisdiction to determine who shall be permitted to practice acupuncture and related techniques in the State of Arkansas; and

(9) Conduct disciplinary proceedings under this chapter.

(c)(1) In the performance of the duties of the Arkansas State Board of Acupuncture and Related Techniques, the Arkansas State Board of Acupuncture and Related Techniques may administer oaths and take testimony on any matters within the Arkansas State Board of Acupuncture and Related Techniques' jurisdiction and issue subpoenas and thereby compel the attendance of persons before the Arkansas State Board of Acupuncture and Related Techniques for the purpose of examining any facts or conditions properly pending before the Arkansas State Board of Acupuncture and Related Techniques for action of the Arkansas State Board of Acupuncture and Related Techniques.

(2) All subpoenas issued by the Arkansas State Board of Acupuncture and Related Techniques shall be served in the manner prescribed by law for the service of subpoenas issuing from the courts, and all persons so served shall obey the subpoenas or be subject to the penalties provided by law for the disobedience of subpoenas issuing from the courts.

History. Acts 1997, No. 816, § 12; 2009, No. 1461, § 3; 2019, No. 315, §§ 1666, 1667; 2019, No. 386, § 58; 2019, No. 910, § 4908.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(5)(A); and substituted "Administrative Rules Subcommittee of

the Legislative Council” for “Administrative Rules and Regulations Subcommittee of the Legislative Council” in (b)(5)(C).

The 2019 amendment by No. 386 added the (a)(1)(A) through (a)(1)(C) designations; in (a)(1)(A), substituted “may incur” for “is empowered to incur”, substituted “the Arkansas State Board of Acupuncture and Related Techniques” for “it”, substituted “the functions” for “its functions”, and added “of the Arkansas State Board of Acupuncture and Related Techniques”; in (a)(1)(B), substituted “The Arkansas State Board of Acupuncture and Related Techniques” for “It”, and made a similar change, and substituted “in performing the functions of the Arkansas State Board of Acupuncture and Related Techniques” for “therefore”; in (a)(1)(C), substituted “an employee” for “no employee”, and inserted “not”; in (b)(1), substituted “the duties” for “its duties”, and inserted “of

the Arkansas State Board of Acupuncture and Related Techniques”; in (b)(5)(A), deleted “such” preceding “rules”, substituted “consistent” for “and regulations not inconsistent”, and substituted “the Arkansas State Board of Acupuncture and Related Techniques” for “it”; in (b)(6), deleted “its” preceding “proceedings”, and added “of the Arkansas State Board of Acupuncture and Related Techniques”; added the (b)(8)(A) and (b)(8)(B) designations; in (c)(1), substituted “the duties” for “its duties”, inserted “of the Arkansas State Board of Acupuncture and Related Techniques” twice, substituted “may administer” for “is empowered to administer”, substituted “the Arkansas State Board of Acupuncture and Related Techniques” for “it”, and deleted “its” preceding “action”.

The 2019 amendment by No. 910 deleted the former last two sentences in (a)(1).

SUBCHAPTER 3 — LICENSING

SECTION.

17-102-304. Application — Fees — Qualifications.

17-102-304. Application — Fees — Qualifications.

(a)(1) No person shall be licensed to practice acupuncture and related techniques unless he or she has passed an examination and has been found to have the necessary qualifications as prescribed in the rules adopted by the Arkansas State Board of Acupuncture and Related Techniques.

(2)(A) Applications for a license to practice acupuncture and related techniques in the State of Arkansas pursuant to this chapter shall be made to the Secretary of the Arkansas State Board of Acupuncture and Related Techniques in writing on forms furnished by the board.

(B) The application shall be signed by the applicant in his or her own handwriting and acknowledged before an officer authorized to administer oaths.

(3) Before any applicant shall be eligible for an examination, the applicant shall furnish satisfactory proof to the board that he or she:

(A) Has successfully completed not fewer than sixty (60) semester credit hours of college education, to include a minimum of thirty (30) semester credit hours in the field of science; and

(B) Has completed a program in acupuncture and related techniques and has received a certificate or diploma from an institute approved by the board as described in this section. The training received in the program shall be for a period of no fewer than four (4)

academic years and shall include a minimum of eight hundred (800) hours of supervised clinical practice.

(b) Before approval of an institute of acupuncture and related techniques, the board shall determine that the institute meets standards of professional education. These standards shall provide that the institute:

(1) Require, as a prerequisite to graduation, a program of study of at least four (4) academic years;

(2) Meet the minimum requirements of a board-approved national accrediting body;

(3) Require participation in a carefully supervised clinical or internship program; and

(4) Confer a certificate, diploma, or degree in acupuncture and related techniques only after personal attendance in classes and clinics.

(c) To qualify to take the examination, an applicant additionally must:

(1) Be at least twenty-one (21) years of age;

(2) Be a citizen of the United States or a legal resident;

(3) Not have had a license to practice acupuncture and related techniques in any other state suspended or revoked nor have been placed on probation for any cause;

(4) Not have been convicted of a felony listed under § 17-3-102; and

(5) Not be a habitual user of intoxicants, drugs, or hallucinatory preparations.

(d) The board may charge the following fees:

(1) Initial application for licensing, a fee not to exceed two hundred fifty dollars (\$250);

(2) Written and practical examination not including the cost of the nationally recognized examination, a fee not to exceed three hundred fifty dollars (\$350);

(3) Biennial licensing renewal, a fee not to exceed four hundred dollars (\$400);

(4) Late renewal more than thirty (30) days, but not later than one (1) year, after expiration of a license, which late fee is in addition to any other fees, a fee not to exceed one hundred dollars (\$100);

(5) Reciprocal licensing, a fee not to exceed seven hundred fifty dollars (\$750);

(6) Annual continuing education provider registration, a fee not to exceed two hundred dollars (\$200); and

(7) Any and all fees to cover reasonable and necessary administrative expenses.

(e)(1)(A) If the applicant is approved, the applicant shall be admitted for examination.

(B) Should the applicant pass the examination, no part of the fee shall be returned, and the applicant shall be issued a license to practice acupuncture and related techniques in accordance with this chapter.

(C) Should an applicant be approved but fail to appear for the examination, no part of his or her fee shall be returned, but the applicant shall be eligible for examination at a later date.

(D) Should the approved applicant fail the examination, no part of his or her fee shall be returned, and the applicant shall be eligible for reexamination at a later date, at the discretion of the board, upon paying an examination fee of fifty dollars (\$50.00) per failed subject up to one hundred fifty dollars (\$150).

(2) If the applicant is not approved, the application and one-half (½) of the examination fee shall be returned to the applicant with the reasons for the disapproval clearly stated.

History. Acts 1997, No. 816, § 17; the remaining subdivisions accordingly; 2019, No. 990, §§ 121, 122. and inserted "listed under § 17-3-102" in

Amendments. The 2019 amendment (c)(4). deleted former (a)(3)(A) and redesignated

CHAPTER 103

SOCIAL WORKERS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS SOCIAL WORK LICENSING BOARD.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-103-104. Exemptions.
17-103-106. Penalties and enforcement.

17-103-104. Exemptions.

(a) This chapter does not prevent members of the clergy, Christian Science practitioners, and licensed professionals such as physicians, nurses, psychologists, counselors, and attorneys from doing work within the standards and ethics of their respective professions, if they do not hold themselves out to the public by any title or description of services as being social workers as defined under this chapter.

(b)(1) This chapter does not limit or prohibit the employment by a licensed hospital in this state of persons who perform services commonly within the definition of social work or of practices performed by social workers if the services are performed within the course and scope of their employment as employees of the hospital and only if the person does not represent himself or herself to the public as a social worker.

(2) This chapter does not require a regular employee of a licensed hospital in this state to be licensed as a licensed social worker, a licensed master social worker, or a licensed certified social worker as a condition of employment by or performance of services as a social worker while employed in a licensed hospital in this state.

(c) This chapter does not limit the activities and services of a graduate or undergraduate student who is currently enrolled in a social work program that is accredited by the Council on Social Work Education if he or she does not represent himself or herself as a social worker.

(d)(1) This chapter does not require a person to be licensed as a licensed social worker who is engaged in the practice of a specialty area of social work while an employee of an agency or department of the state in any of the following job classifications, but only if the person is engaged in that practice as an employee of the agency or department and only if the person does not represent himself or herself to the public as a social worker:

- (A) A family service worker;
- (B) A social service worker; or
- (C) An adult protective services worker.

(2) It is the intent of the General Assembly to restrict licensure to those individuals who are represented to be social workers. It is not the intent of the General Assembly to license persons such as state employees in the job classifications of social service workers and family service workers.

History. Acts 1999, No. 1122, § 1; 2009, No. 297, § 1; 2011, No. 859, § 13; 2015, No. 1170, § 1; 2019, No. 623, § 1.

Amendments. The 2019 amendment substituted “who is currently enrolled in a social work program that is accredited by the Council on Social Work Education if he or she does not represent himself or herself as a social worker” for “from an accredited educational institution” in (c).

17-103-106. Penalties and enforcement.

(a) Violations of this chapter shall constitute Class A misdemeanors.

(b)(1)(A) When the Arkansas Social Work Licensing Board is made aware of a possible violation of § 17-103-105, a registered letter with a return receipt requested shall be mailed to the individual in question, calling to his or her attention the pertinent aspects of the law and the rules of the board.

(B) If the individual continues the alleged illegal practice, the information shall be forwarded to the appropriate law enforcement authorities for legal action.

(2) The board shall assist the prosecuting attorney in the enforcement of this chapter.

(3) Any member of the board may present evidence of a violation to the appropriate prosecuting attorney.

History. Acts 1999, No. 1122, § 1; 2003, No. 1274, § 1; 2019, No. 315, § 1668.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (b)(1)(A).

SUBCHAPTER 2 — ARKANSAS SOCIAL WORK LICENSING BOARD

SECTION.

17-103-202. Organization and functions.
17-103-203. Powers and duties.

SECTION.

17-103-204. Disposition of funds.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-103-202. Organization and functions.

(a)(1) At least two (2) regular meetings of the Arkansas Social Work Licensing Board shall be held each calendar year.

(2) At the first regular meeting each year, the board shall elect a chair, a vice chair, and a secretary.

(3) Other regular meetings may be held at such time as the rules of the board may provide.

(b) Special called meetings may be held at the discretion of the Chair of the Arkansas Social Work Licensing Board or at the written request of any three (3) members of the board.

(c) Reasonable notice of all meetings shall be given in the manner prescribed by the laws of this state.

(d) A quorum of the board shall consist of four (4) members.

(e) The board may employ a Director of the Arkansas Social Work Licensing Board, in consultation with the Secretary of the Department of Health, for the performance of its functions and fix the compensation of the director within the limits of funds available to the board.

(f) The board shall adopt a seal that shall be affixed to all certificates issued by the board.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 3; 2019, No. 910, § 4909.

Amendments. The 2019 amendment rewrote (e), which formerly read: "The

board shall employ necessary personnel for the performance of its functions and fix the compensation of the director within the limits of funds available to the board".

17-103-203. Powers and duties.

(a) The Arkansas Social Work Licensing Board has all the powers and duties granted under this chapter.

(b) In addition to the duties set forth elsewhere in this chapter, the board shall:

(1) Establish the criteria and process for licensure through endorsement;

(2) Make available under the Freedom of Information Act of 1967, § 25-19-101 et seq., the following information:

(A) A list of the names and addresses of all persons licensed under this chapter;

(B) A list of the names and addresses of all persons who hold a certification of registration under this chapter;

(C) A list of names of social workers who have been found in violation of this chapter or any rules promulgated under this chapter; and

(D) The findings of fact, conclusions of law, and order regarding a social worker who has been found in violation of this chapter or any rules promulgated under this chapter;

(3) Establish mechanisms for appeal and decisions regarding applications and granting of licenses, with such mechanisms to include provisions for judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(4) Make rules consistent with law as may be necessary to regulate its proceedings;

(5) Compile an annual report;

(6) Establish rules defining unprofessional conduct and set forth and publish a code of ethics and standards for practice;

(7) Establish fees and publish financial records;

(8) Establish continuing education requirements and notify the applicants for licensing of the requirement; and

(9) At the time of license renewal, require each applicant to present satisfactory evidence that, in the period since the license was issued, he or she has completed the continuing education requirements specified by the board.

History. Acts 1999, No. 1122, § 1; substituted “endorsement” for “reciprocity” in (b)(1).
2015, No. 1170, § 3; 2019, No. 623, § 2.

Amendments. The 2019 amendment

17-103-204. Disposition of funds.

(a) The Director of the Arkansas Social Work Licensing Board or his or her designee shall receive and account for all money derived under the provisions of this chapter and shall pay the money to the Treasurer of State, who shall keep the money in a separate fund to be known as the “Social Work Licensing Fund”.

(b) Money may be paid out of the fund only by warrant drawn by the Chief Fiscal Officer of the State on the State Treasury.

(c) There shall be audits of the fund as required by law.

(d) The director shall be bonded to handle the finances of the Arkansas Social Work Licensing Board in compliance with state rules.

(e) The board may make expenditures from the fund for any purpose that is reasonable and necessary to carry out the provisions of this chapter.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 3; 2019, No. 910, §§ 4910, 4911. deleted “Executive” preceding “Director” in (a); and deleted “executive” preceding “director” in (d).

Amendments. The 2019 amendment

SUBCHAPTER 3 — LICENSING

SECTION.

17-103-302. Endorsement.

17-103-305. Renewal, revocation, suspension — Disciplinary proceedings.

SECTION.

17-103-306. Qualifications — Issuance.

17-103-307. Criminal background checks.

17-103-302. Endorsement.

The Arkansas Social Work Licensing Board may grant a license without examination to a person meeting all of the other requirements of this chapter and who at the time of application is licensed as a social worker by a similar board of another state, territory, district, or Canadian province whose standards, in the opinion of the Arkansas Social Work Licensing Board, are substantially equivalent to those required by this chapter.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 4; 2019, No. 623, § 3. ity” in the section heading; substituted “Arkansas Social Work Licensing Board”

Amendments. The 2019 amendment substituted “Endorsement” for “Reciprocity” for “board” and substituted “substantially equivalent to” for “not lower than”.

17-103-305. Renewal, revocation, suspension — Disciplinary proceedings.

(a) The Arkansas Social Work Licensing Board may refuse to issue or renew a license or may revoke or suspend a license issued under this chapter or may impose other appropriate restrictions or additional impositions, including without limitation supervision, probation, counseling, reporting, drug screening, and additional continuing education for any of the following causes or reasons:

(1) Violation of a provision of this chapter;

(2) Gross negligence in the practice of social work;

(3) Engaging in a course of unprofessional conduct as defined by the rules established by the board or violation of the code of ethics made and published by the board; or

(4) Failing to meet one (1) of the qualifications for issuance of a license under § 17-103-307.

(b) The board shall refuse to issue or shall revoke the license of a person who has been found guilty of a felony listed under § 17-3-102 or criminal offense involving violence, dishonesty, fraud, deceit, breach of client trust, or abuse of the vulnerable unless the person requests and the board grants a waiver under § 17-3-102(b).

(c)(1) The board shall conduct hearings.

(2) Decisions shall be determined by a majority vote of the board. All proceedings shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1999, No. 1122, § 1; in (b), substituted “listed under § 17-3-2015, No. 1170, § 6; 2019, No. 990, § 123. 102” for “any crime involving moral turpitude” and made stylistic changes.

Amendments. The 2019 amendment,

17-103-306. Qualifications — Issuance.

(a)(1) The Arkansas Social Work Licensing Board shall issue a Licensed Social Worker license to an applicant who qualifies as follows:

(A) Has a baccalaureate degree in a social work program from a program accredited by the Council on Social Work Education or the Canadian Association for Social Work Education, or has received before June 17, 1986, a baccalaureate degree in a social work program from an accredited educational institution;

(B) Has passed an examination approved by the board for this purpose and level of practice;

(C) Has applied for a criminal background check and meets the qualifications for issuance of a license under § 17-103-307;

(D) [Repealed.]

(E) Is physically and mentally competent to provide social work services with reasonable skill and safety;

(F) Is not affected by a mental or physical disease or condition that would impair the applicant’s competency to provide social work services;

(G) Has not pleaded guilty or nolo contendere to or been found guilty of a felony listed under § 17-3-102 or criminal offense involving violence, dishonesty, fraud, deceit, breach of client trust, or abuse of the vulnerable;

(H) Does not use drugs or alcohol to an extent that the use affects the applicant’s professional competency; and

(I) Has not engaged in fraud or deceit in making the application.

(2)(A) The board shall issue a Provisional Licensed Social Worker license one (1) time only to an applicant who qualifies under this subsection.

(B) A Provisional Licensed Social Worker license is good for one (1) year and up to three (3) attempts to pass the examination approved by the board for this purpose and level of practice.

(b)(1) The board shall issue a Licensed Master Social Worker license to an applicant who qualifies as follows:

(A) Has a master’s degree in social work from a program accredited by the Council on Social Work Education or the Canadian

Association for Social Work Education, or has received before June 17, 1986, a master's degree in a social work program from an accredited educational institution;

(B) Has passed an examination approved by the board for this purpose and level of practice;

(C) Has applied for a criminal background check and meets the qualifications for issuance of a license under § 17-103-307;

(D) Has good moral character;

(E) Is physically and mentally competent to provide social work services with reasonable skill and safety;

(F) Is not afflicted by a mental or physical disease or condition that would impair the applicant's competency to provide social work services;

(G) Has not pleaded guilty or nolo contendere to or been found guilty of a felony listed under § 17-3-102 or criminal offense involving violence, dishonesty, fraud, deceit, breach of client trust, or abuse of the vulnerable;

(H) Does not use drugs or alcohol to an extent that the use affects the applicant's professional competency; and

(I) Has not engaged in fraud or deceit in making the application.

(2)(A) The board shall issue a Provisional Licensed Master Social Worker license one (1) time only to an applicant who qualifies under this subsection.

(B) A Provisional Licensed Master Social Worker license is good for one (1) year and up to three (3) attempts to pass the examination approved by the board for this purpose and level of practice.

(c)(1) The board shall issue a license as a Licensed Certified Social Worker to an applicant who qualifies as follows:

(A) Has a master's degree in social work from a program accredited by the Council on Social Work Education or the Canadian Association for Social Work Education, or has received before June 17, 1986, a master's degree in a social work program from an accredited educational institution;

(B)(i) Has at least twenty-four (24) months of supervised social work experience under a licensed certified social worker.

(ii) The supervised social work experience required under subdivision (c)(1)(B)(i) of this section shall include at least four thousand (4,000) hours in a social work position under the supervision of a licensed certified social worker or a social worker whom the board determines to have qualifications equivalent to those required of a licensed certified social worker;

(C) Has passed an examination approved by the board for this purpose and level of practice;

(D) Has applied for a criminal background check and meets the qualifications for issuance of a license under § 17-103-307;

(E) Has good moral character;

(F) Is physically and mentally competent to provide social work services with reasonable skill and safety;

(G) Is not affected by a mental or physical disease or condition that would impair the applicant's competency to provide social work services;

(H) Has not pleaded guilty or nolo contendere to or been found guilty of a felony listed under § 17-3-102 or criminal offense involving violence, dishonesty, fraud, deceit, breach of client trust, or abuse of the vulnerable;

(I) Does not use drugs or alcohol to an extent that the use affects the applicant's professional competency; and

(J) Has not engaged in fraud or deceit in making the application.

(2)(A) The board shall issue a Provisional Licensed Master Social Worker license one (1) time only to an applicant who qualifies under this subsection.

(B) A Provisional Licensed Master Social Worker license is good for one (1) year and up to three (3) attempts to pass the examination approved by the board for this purpose and level of practice.

(C) A Provisional Licensed Certified Social Worker license is not available.

History. Acts 1999, No. 1122, § 1; 2015, No. 1170, § 6; 2019, No. 990, §§ 124-127. repealed (a)(1)(D); substituted "listed under § 17-3-102" for "any crime involving moral turpitude" in (a)(1)(G), (b)(1)(G), and (c)(1)(H); and made stylistic changes.

Amendments. The 2019 amendment

17-103-307. Criminal background checks.

(a) Each applicant for a license issued by the Arkansas Social Work Licensing Board is required to apply for a state and national criminal background check, to be conducted by the Division of Arkansas State Police and the Federal Bureau of Investigation.

(b) The criminal background check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Division of Arkansas State Police shall forward to the board all releasable information obtained concerning the applicant.

(e) For purposes of this section, the board shall follow the licensing restrictions based on criminal records under § 17-3-102.

(f)(1) Information received by the board from the Identification Bureau of the Division of Arkansas State Police under this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative or the person whose license is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the division.

(g) Information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(h) Rights of privilege and confidentiality established in this section do not extend to any document created for purposes other than the criminal background check.

(i) The board shall adopt the necessary rules to fully implement the provisions of this section.

History. Acts 1999, No. 1122, § 1; 2003, No. 1087, § 17; 2003, No. 1384, § 1; 2005, No. 1923, § 4; 2011, No. 570, § 123; 2015, No. 1170, § 6; 2017, No. 367, §§ 21, 22; 2017, No. 664, §§ 15, 16; 2019, No. 990, § 128.

Amendments. The 2019 amendment,

in (d), inserted “releasable” and deleted “in the commission of any offense listed in subsection (c) of this section” following “applicant”; rewrote (e); deleted former (f) and redesignated the remaining subsections accordingly; and deleted (k).

CHAPTER 104

PERFUSIONISTS LICENSURE ACT

SUBCHAPTER.

1. GENERAL PROVISIONS.
3. LICENSING.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-104-102. Definitions.

17-104-102. Definitions.

As used in this chapter:

(1) “Extracorporeal circulation” means the diversion of a patient’s blood through a heart-lung machine or a similar device that assumes the functions of the patient’s heart, lungs, kidneys, liver, or other organs;

(2) “Licensed perfusionist” means a person licensed under this chapter;

(3) “Perfusion” means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, or respiratory systems or other organs, or a combination of those activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and supervision of a licensed physician, including:

(A) The use of extracorporeal circulation, long-term cardiopulmonary support techniques, including, but not limited to, extracorporeal carbon-dioxide removal and extracorporeal membrane oxygenation and associated therapeutic and diagnostic technologies;

(B) Counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion;

(C) The use of techniques involving blood management, advanced life support, and related functions;

(D) The administration of pharmacological and therapeutic agents or blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line for perfusion purposes as ordered by a physician;

(E) The performance and use of:

- (i) Anticoagulation monitoring and analysis;
- (ii) Physiologic monitoring and analysis;
- (iii) Blood gas and chemistry monitoring and analysis;
- (iv) Hematologic monitoring and analysis;
- (v) Hypothermia;
- (vi) Hyperthermia;
- (vii) Hemoconcentration and hemodilution; and
- (viii) Hemodialysis; and

(F) The observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures;

(4) “Perfusion protocols” means perfusion-related policies and protocols developed or approved by a licensed healthcare facility or a physician through collaboration with administrators, licensed perfusionists, and other healthcare professionals; and

(5) “Provisional licensed perfusionist” means a person provisionally licensed under this chapter.

History. Acts 1999, No. 888, § 2; 2017, No. 540, § 35; 2019, No. 386, §§ 59, 60.

Amendments. The 2019 amendment repealed former (1) and (2).

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-104-304. License qualification.
- 17-104-309. Investigation of complaints.
- 17-104-310. Monitoring.

SECTION.

- 17-104-311. Sanctions.
- 17-104-312. Violations.

17-104-304. License qualification.

(a) A license for a provisional licensed perfusionist may be issued to a person who has successfully completed an approved perfusion education program and filed an application, paid the application fee, and submitted evidence satisfactory to the Department of Health of the successful completion of the education requirements set forth in this chapter.

(b) A provisional licensed perfusionist shall be under the supervision and direction of a licensed perfusionist at all times. Rules governing the supervision and direction of the provisionally licensed perfusionist shall not require the immediate physical presence of the supervising licensed perfusionist.

(c) A provisional perfusionist license is valid for one (1) year from the date issued and may be renewed by the same procedures established for renewal for a licensed perfusionist.

(d) Upon notification by the department that a person has failed any portion of the licensure examination, the person shall surrender the provisional perfusionist license to the department.

History. Acts 1999, No. 888, § 11; substituted “Rules” for “Regulations” in 2019, No. 315, § 1669. the second sentence of (b).

Amendments. The 2019 amendment

17-104-309. Investigation of complaints.

(a) The State Board of Health shall adopt rules concerning the investigation of a complaint filed with the Department of Health. The rules adopted under this section shall:

(1) Ensure that complaints are not dismissed without appropriate consideration; and

(2) Ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint.

(b) The department shall dispose of all complaints in a timely manner.

History. Acts 1999, No. 888, § 16; substituted “rules” for “regulations” twice in 2019, No. 315, § 1670. in the introductory language of (a).

Amendments. The 2019 amendment

17-104-310. Monitoring.

The State Board of Health shall develop a system for monitoring licensees’ compliance with this chapter. Rules adopted under this section shall include procedures for monitoring licensees to determine that the licensee performs the acts required by the Department of Health and to identify and monitor licensees who represent a risk to the public.

History. Acts 1999, No. 888, § 17; substituted “Rules” for “Regulations” in 2019, No. 315, § 1671. the second sentence.

Amendments. The 2019 amendment

17-104-311. Sanctions.

(a) The Department of Health shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee upon a determination of:

(1) Any violation of this chapter; or

(2) Any violation of a rule or code of ethics adopted by the State Board of Health.

(b) If a license suspension is probated, the department may require the licensee to:

(1) Report on a regular basis to the department on matters that are the basis of the probation;

- (2) Limit practice to the areas prescribed by the department; or
- (3) Continue the person's professional education until the licensee reaches a degree of skill satisfactory to the department in those areas that are the basis of the probation.
- (c) Upon a determination by the department to suspend or revoke a person's license, the licensee is entitled to a hearing before the board. The board shall prescribe procedures by which all decisions to suspend or revoke a license are appealable to the board.
- (d) The board shall adopt a schedule of sanctions for violations under this chapter.
- (e) A member of the board or hearing examiner may not communicate with a party to a proceeding pending before the department or with a party's representative, unless notice and an opportunity to participate are given to each party to the proceedings.

History. Acts 1999, No. 888, § 18; substituted "rule" for "regulation" in 2019, No. 315, § 1672. (a)(2).

Amendments. The 2019 amendment

17-104-312. Violations.

The Department of Health shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee upon a determination of:

- (1) Any violation of this chapter;
- (2) Any violation of a rule or code of ethics adopted by the State Board of Health; or
- (3) Unprofessional conduct, which includes, but is not limited to:
 - (A) Incompetence or gross negligence in carrying out usual perfusion functions;
 - (B) A conviction of practicing perfusion without a license or a provisional license;
 - (C) The use of advertising relating to perfusion in a manner which violates state law;
 - (D) Procuring a license or provisional license by fraud, misrepresentation, or mistake;
 - (E) Making or giving any false statement or information in connection with the application for the license or provisional license;
 - (F) A plea of guilty, nolo contendere, or a finding of guilt of a felony listed under § 17-3-102 or any offense substantially related to the qualifications, functions, or duties of a perfusionist, in which event the record shall be conclusive evidence; or
 - (G) Impersonating an applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

History. Acts 1999, No. 888, § 19; 2019, No. 990, § 129.

Amendments. The 2019 amendment inserted "listed under § 17-3-102" in (3)(F).

CHAPTER 105

PHYSICIAN ASSISTANTS

SECTION.

- 17-105-101. Definitions.
- 17-105-102. Qualifications for licensure.
- 17-105-106. Exemption from licensure.
- 17-105-107. Scope of authority — Delegatory authority.
- 17-105-108. Prescriptive authority.
- 17-105-110. Supervising physician.
- 17-105-111. Notification.
- 17-105-113. Violation.
- 17-105-115. Title and practice protection.

SECTION.

- 17-105-116. Identification requirements.
- 17-105-117. Rulemaking authority.
- 17-105-121. Physician assistant employment — Uniform Classification Plan.
- 17-105-122. Physician assistant patient care orders.
- 17-105-124. Participation in disaster and emergency care.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncoded sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-105-101. Definitions.

As used in this chapter:

(1)(A) “Physician assistant” means a healthcare professional qualified by academic and clinical education and licensed by the Arkansas State Medical Board to provide healthcare services and who has:

(i) Graduated from a program for the education and training of physician assistants that has been approved by the Accreditation Review Commission on Education for the Physician Assistant or its successors; and

(ii) Passed the certifying examination administered by the National Commission on Certification of Physician Assistants.

(B) The physician assistant is a dependent medical practitioner who:

(i) Provides healthcare services under the supervision of a physician; and

(ii) Works under a delegation agreement with a physician;

(2) “Supervising physician” means a doctor of medicine or doctor of osteopathy licensed by the board who supervises physician assistants; and

(3) “Supervision” means overseeing the activities of and accepting responsibility for the medical services rendered by a physician assistant. The constant physical presence of the supervising physician is not required so long as the supervising physician and physician assistant are or can be easily in contact with one another by radio, telephone, electronic, or other telecommunication device. Supervision of each physician assistant by a physician or physicians shall be continuous.

History. Acts 1999, No. 851, § 1; 2019, No. 386, § 61; 2021, No. 634, § 7. repealed former (1).
The 2021 amendment rewrote (1).

Amendments. The 2019 amendment

17-105-102. Qualifications for licensure.

(a) Except as otherwise provided in this chapter, an individual must be licensed by the Arkansas State Medical Board before the individual may practice as a physician assistant.

(b) The board may grant a license as a physician assistant to an applicant who:

- (1) Submits an application on forms approved by the board;
- (2) Pays the appropriate fees as determined by the board;
- (3) Has successfully completed an educational program for physician assistants accredited by the Accreditation Review Commission on Education for the Physician Assistant or by its successor agency and has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;
- (4) Certifies that he or she is mentally and physically able to engage safely in practice as a physician assistant;
- (5) Has no licensure, certification, or registration as a physician assistant under current discipline, revocation, suspension, or probation for cause resulting from the applicant’s practice as a physician assistant, unless the board considers the condition and agrees to licensure;
- (6) [Repealed.]
- (7) Submits to the board any other information the board deems necessary to evaluate the applicant’s qualifications;
- (8) Has been approved by the board;
- (9) Is at least twenty-one (21) years of age; and
- (10) After July 1, 1999, has at least a bachelor’s degree in some field of study from a regionally accredited college or university, unless the applicant has:

(A) Prior service as a military corpsman and is a graduate of a physician assistant education program recognized by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs or the applicant is

currently certified by the National Commission on Certification of Physician Assistants;

(B) Was serving as a physician assistant in a federal facility located in the State of Arkansas on or after July 1, 1999, and who is a graduate of a physician assistant education program recognized by the Committee on Allied Health Education and Accreditation or the Commission on Accreditation of Allied Health Education Programs;

(C) Was licensed in good standing on June 30, 1999, by the board; or

(D) Was enrolled on or before July 1, 1999, in a physician assistant program recognized by the Commission on Accreditation of Allied Health Education Programs.

History. Acts 1999, No. 851, § 2; 2019, No. 263, § 1; 2019, No. 990, § 130; 2021, No. 634, § 8.

Amendments. The 2019 amendment by No. 263 substituted "Accreditation Review Commission on Education for the Physician Assistant" for "Committee on

Allied Health Education and Accreditation" in (b)(3).

The 2019 amendment by No. 990 repealed (b)(6).

The 2021 amendment deleted "or surgeon assistants" preceding "accredited" in (b)(3).

17-105-106. Exemption from licensure.

This chapter does not require licensure of:

(1) A physician assistant student enrolled in a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant or by its successor agency;

(2) A physician assistant employed in the service of the United States Government while performing duties incident to that employment;

(3) Technicians, other assistants, or employees of physicians who perform delegated tasks in the office of a physician but who are not rendering services as a physician assistant or identifying themselves as a physician assistant;

(4) A physician assistant in the service of the Department of the Military or the Arkansas National Guard, or both. These physician assistants shall be allowed to perform their physician assistant practice duties, including prescribing, in the same manner as they would if federalized by the United States Government;

(5) A physician assistant who is temporarily transiting through the State of Arkansas while caring for a patient, provided that he or she remains under the supervision of his or her supervising physician; or

(6) A physician assistant providing services through a program in partnership with federal Innovative Readiness Training if the physician assistant has obtained a license to practice from another state, commonwealth, territory, or the District of Columbia.

History. Acts 1999, No. 851, § 6; 2017, No. 205, § 10; 2019, No. 910, § 5543; 2021, No. 634, § 9.

Amendments. The 2019 amendment substituted “Department of the Military” for “State Military Department” in (4).

The 2021 amendment, in (1), deleted “or

surgeon assistant” preceding “educational program” and substituted “Accreditation Review Commission on Education for the Physician Assistant” for “Commission on Accreditation of Allied Health Education Programs”.

17-105-107. Scope of authority — Delegatory authority.

(a)(1) A physician assistant may provide healthcare services a physician assistant is licensed or otherwise authorized to perform under an agreement with a supervising physician.

(2) A physician assistant may perform duties and responsibilities, including prescribing, ordering, and administering drugs and medical devices, that are delegated by a supervising physician under an agreement determined at the practice level.

(3) A supervising physician shall not delegate to a physician assistant the duty or responsibility to perform or induce an abortion.

(b)(1) Physician assistants shall be considered the agents of their supervising physicians in the performance of all practice-related activities, including, but not limited to, the ordering of diagnostic, therapeutic, and other medical services.

(2) A physician assistant may provide medical services delegated by a supervising physician when the service is within the skills of the physician assistant, forms a component of the supervising physician’s scope of practice, and is conducted under the supervision of the supervising physician.

(c) Physician assistants may perform healthcare services in any setting authorized by the supervising physician in accordance with any applicable facility policy.

(d) A physician assistant may pronounce death and may authenticate with his or her signature a form that may be authenticated by a supervising physician’s signature as authorized under § 17-80-120.

History. Acts 1999, No. 851, § 7; 2021, No. 634, § 10.

Amendments. The 2021 amendment deleted “Agent of supervising physician” from the end of the section heading; added designations within (a); rewrote (a)(1); sub-

stituted “a supervising physician under an agreement determined at the practice level” for “their supervising physicians” in (a)(2); added (a)(3); redesignated (b) as (b)(1); added (b)(2); deleted former (d); added present (d); and made stylistic changes.

17-105-108. Prescriptive authority.

(a)(1) Physicians supervising physician assistants may delegate prescriptive authority to physician assistants to include receiving, prescribing, ordering, and administering Schedules II-V controlled substances as described in the Uniform Controlled Substances Act, § 5-64-101 et seq., and 21 C.F.R. Part 1300, all legend drugs, and all nonschedule prescription medications and medical devices.

(2) A physician assistant's prescriptive authority extends to drugs listed in Schedule II only if the prescription is for:

(A) An opioid, if the prescription is only for a five-day period or less; or

(B) A stimulant, if the prescription meets the following criteria:

(i) The prescription was originally initiated by a physician;

(ii) The physician has evaluated the patient within six (6) months before the physician assistant issues a prescription; and

(iii) The prescription by the physician assistant is to treat the same condition as the original prescription.

(b) A physician assistant may prescribe hydrocodone combination products reclassified from Schedule III to Schedule II as of October 6, 2014, if authorized by the physician assistant's supervising physician and in accordance with other requirements of this section.

(c) At no time shall a physician assistant's level of prescriptive authority exceed that of the supervising physician.

(d) Physician assistants who prescribe controlled substances shall register with the United States Drug Enforcement Administration as part of the United States Drug Enforcement Administration's Mid-Level Practitioner Registry, 21 C.F.R. Part 1300, 58 FR 31171-31175, and the Controlled Substances Act.

(e) The Arkansas State Medical Board shall promptly adopt rules concerning physician assistants that are consistent with the board's rules governing the prescription of dangerous drugs and controlled substances by physicians.

History. Acts 1999, No. 851, § 8; 2015, No. 529, § 2; 2021, No. 634, § 10.

Amendments. The 2021 amendment redesignated (a) as (a)(1); in (a)(1), in-

serted "receiving", substituted "Schedules II-V" for "Schedule III-V", and deleted the former second sentence; and added (a)(2).

17-105-110. Supervising physician.

A physician desiring to supervise a physician assistant must:

(1) Be licensed in this state; and

(2)(A) Enter into and maintain a written agreement with the physician assistant.

(B) The agreement shall state that the physician shall:

(i) Exercise supervision over the physician assistant in accordance with this section and rules adopted by the Arkansas State Medical Board; and

(ii) Retain professional and legal responsibility for the care provided by the physician assistant.

(C) The agreement shall be signed by the physician and the physician assistant and updated annually.

History. Acts 1999, No. 851, § 10; 2021, No. 634, § 11.

Amendments. The 2021 amendment rewrote the section.

17-105-111. Notification.

A physician assistant shall notify the Arkansas State Medical Board of any changes or additions in supervising physicians within ten (10) calendar days.

History. Acts 1999, No. 851, § 11; 2021, No. 634, § 12.

Amendments. The 2021 amendment deleted “of intent to practice” following “Notification” in the section heading; de-

leted former (a) and removed the (b) designation from the remaining provisions; and substituted “Arkansas State Medical Board” for “board”.

17-105-113. Violation.

Following the exercise of due process, the Arkansas State Medical Board may discipline any physician assistant who:

(1) Fraudulently or deceptively obtains or attempts to obtain a license;

(2) Fraudulently or deceptively uses a license;

(3) Violates any provision of this chapter or any rules adopted by the board pertaining to this chapter or any other laws or rules governing licensed healthcare professionals;

(4) Is convicted of a felony listed under § 17-3-102;

(5) Is a habitual user of intoxicants or drugs to such an extent that he or she is unable to safely perform as a physician assistant;

(6) Has been adjudicated as mentally incompetent or has a mental condition that renders him or her unable to safely perform as a physician assistant;

(7) Represents himself or herself as a physician;

(8) Is negligent in practice as a physician assistant;

(9) Demonstrates professional incompetence;

(10) Violates patient confidentiality except as required by law;

(11) Engages in conduct likely to deceive, defraud, or harm the public;

(12) Engages in unprofessional or immoral conduct;

(13) Prescribes, sells, administers, distributes, orders, or gives away a drug classified as a controlled substance for other than medically accepted therapeutic purposes;

(14) Has been disciplined by this state or another state or jurisdiction for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as defined in this section; or

(15) Fails to cooperate with an investigation conducted by the board.

History. Acts 1999, No. 851, § 13; 2019, No. 315, § 1673; 2019, No. 990, § 131; 2021, No. 634, § 13.

Amendments. The 2019 amendment by No. 315 substituted “rules” for “regulations” in (3).

The 2019 amendment by No. 990 added “listed under § 17-3-102” in (4); and de-

leted former (7) and redesignated the remaining subsection accordingly.

The 2021 amendment added “or any other laws or rules governing licensed healthcare professionals” in (3); and added (8) through (15).

17-105-115. Title and practice protection.

(a) Any person not licensed under this chapter is guilty of a Class A misdemeanor and is subject to penalties applicable to the unlicensed practice of medicine if he or she:

- (1) Holds himself or herself out as a physician assistant;
- (2) Uses any combination or abbreviation of the term "physician assistant" to indicate or imply that he or she is a physician assistant; or
- (3) Acts as a physician assistant without being licensed by the Arkansas State Medical Board.

(b) An unlicensed physician shall not be permitted to use the title of physician assistant or to practice as a physician assistant unless he or she fulfills the requirements of this chapter.

History. Acts 1999, No. 851, § 15; added "without being licensed by the Arkansas State Medical Board" in (a)(3).

Amendments. The 2021 amendment

17-105-116. Identification requirements.

Physician assistants licensed under this chapter shall keep their license available for inspection at their primary place of practice and when engaged in their professional activities shall wear a name tag identifying themselves as a physician assistant.

History. Acts 1999, No. 851, § 16; substituted "primary place of practice" for "primary place of business".

Amendments. The 2021 amendment

17-105-117. Rulemaking authority.

(a) The Arkansas State Medical Board shall promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., that are reasonable and necessary for the performance of the various duties imposed upon the board by this chapter, including, but not limited to:

- (1) Establishing license renewal dates; and
 - (2) Setting the level of liability coverage.
- (b) The board may levy the following fees:
- (1) Physician assistant application for licensure fee, eighty dollars (\$80.00);
 - (2) Initial application fee for the physician employer, fifty dollars (\$50.00);
 - (3) Physician assistant annual relicensure fee, fifty dollars (\$50.00);
 - (4) Physician assistant delinquent licensure fee, twenty-five dollars (\$25.00) for each delinquent year or part thereof;
 - (5) Physician assistant application for graduate or temporary licensure fee, ten dollars (\$10.00); and
 - (6) Physician assistant one-time extension graduate licensure fee, forty dollars (\$40.00).

(c) The board may appoint a physician assistant advisory committee to assist in the administration of this chapter.

History. Acts 1999, No. 851, § 17; substituted “rules” for “regulations” in the 2019, No. 315, § 1674. introductory language of (a).

Amendments. The 2019 amendment

17-105-121. Physician assistant employment — Uniform Classification Plan.

(a) The Office of Personnel Management shall establish and maintain a position classification of physician assistant. The initial position classification shall mirror the Veterans Health Administration Directive 10-95-020 of March 3, 1995, and the United States Department of Veterans Affairs regulation as embodied in:

- (1) MP-5, Part II, Chapter 2, Change 2, Appendix H; and
- (2) MP-5, Part II, Chapter 5, Change 5.

(b) Modifications or changes in the future to the state position classification of physician assistant shall only be made based upon the concurrence of the physician assistant advisory committee.

History. Acts 1999, No. 851, § 21; Services of the Department of Finance and Administration” following “Office of 2019, No. 910, § 6077. Personnel Management” in (a).

Amendments. The 2019 amendment deleted “of the Division of Management

17-105-122. Physician assistant patient care orders.

(a) Patient care orders generated by a physician assistant shall be construed as having the same medical, health, and legal force and effect as if the orders were generated by the physician assistant’s supervising physician.

(b) The orders shall be complied with and carried out as if the orders had been issued by the physician assistant’s supervising physician.

History. Acts 1999, No. 851, § 22; supervising physician” for “their supervising 2021, No. 634, § 16. physician, provided that the supervising

Amendments. The 2021 amendment substituted “the physician assistant’s su- physician’s name is identified in the pa- tient care order” in (a).

17-105-124. Participation in disaster and emergency care.

(a) A physician assistant may render care within his or her scope of practice when responding to a need for medical care created by an emergency or a state or local disaster if the physician assistant is:

- (1) Licensed in this state;
- (2) Licensed or authorized to practice in another state or territory; or
- (3) Credentialed as a physician assistant by a federal employer.

(b)(1) A physician assistant who voluntarily and gratuitously, other than in the ordinary course of his or her employment or practice, renders emergency medical assistance is not liable for civil damages for

personal injuries that result from acts or omissions of the physician assistant that may constitute ordinary negligence.

(2) The immunity granted by subdivision (b)(1) of this section does not apply to acts or omissions of a physician assistant that constitute gross, willful, or wanton negligence.

History. Acts 2021, No. 634, § 17.

CHAPTER 106
CONSUMER-PATIENT RADIATION HEALTH AND
SAFETY

SUBCHAPTER.
1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.	SECTION.
17-106-103. Definitions.	17-106-107. Licensing requirements.
17-106-104. Medical Ionizing Radiation Licensure Committee.	17-106-108. Examinations.
17-106-105. Duties and powers.	17-106-109. Licenses.
	17-106-110. Discipline.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

17-106-103. Definitions.

As used in this chapter:

(1) “Consumer” means a person who is a resident of this state but who is not a licensed practitioner or radiologic technologist or licensed technologist or limited licensed technologist under this chapter;

(2) “Direct supervision”, pertaining to students, means responsibility for, and control of, radiation safety, protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes, with the parameters that are outlined by educational accreditation agencies that are recognized by the State Board of Health;

(3) "Ionizing radiation" means gamma rays, X rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles;

(4) "License" means a certificate issued by the State Board of Health authorizing the licensee to use radioactive materials or medical equipment emitting or detecting ionizing radiation for human diagnostic or therapeutic purposes in accordance with this chapter;

(5) "Licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathy, or optometry in this state;

(6) "Licensed technologist" means a person other than a licensed practitioner who administers radioactive substances or uses medical equipment emitting or detecting ionizing radiation for human diagnostic or therapeutic purposes under the supervision of a licensed practitioner and who is "grandfathered" under this chapter;

(7) "Limited license" means an authorization to perform radiologic procedures under the supervision of a licensed practitioner that are limited to specific parts of the human body, specifically of the chest and skeletal structures, or limited to specific procedures, or both;

(8) "Limited licensed technologist" means a person, other than a licensed practitioner, radiologic technologist, or licensed technologist, who:

(A) While under the supervision of a licensed practitioner, operates medical equipment emitting ionizing radiation for diagnostic purposes on human beings that are limited to specific body parts; and

(B) Has successfully passed a limited scope examination deemed appropriate by the State Board of Health;

(9) "Medical dosimetrist" means a person who is certified or eligible for certification by the Medical Dosimetrist Certification Board;

(10) "Nuclear medicine technologist" means a person, other than a licensed practitioner, who performs therapeutic, in vivo, imaging, and measurement procedures, prepares radiopharmaceuticals, and administers diagnostic doses of radiopharmaceuticals to human beings while under supervision of a licensed practitioner who is licensed as required to possess and use radioactive materials;

(11) "Radiation health/medical physicist" means a person who is certified or eligible for certification in radiologic physics by the American Board of Radiology, the American Board of Health Physics, the American Board of Medical Physics, or the American Board of Science in Nuclear Medicine;

(12) "Radiation practitioner" means a licensed practitioner who has completed a residency in radiology, nuclear medicine, or radiation oncology, or is certified by the American Board of Radiology, the American Osteopathic Board of Radiology, or the American Board of Nuclear Medicine or its equivalent;

(13) "Radiation therapist" means a person, other than a licensed practitioner or nuclear medicine technologist, who applies radiation to humans for therapeutic purposes under the supervision of a licensed practitioner;

(14) "Radiologic technologist" means a person, other than a licensed practitioner, licensed under this chapter who administers radioactive substances or uses medical equipment emitting or detecting ionizing radiation for human diagnostic or therapeutic purposes under the supervision of a licensed practitioner and holds a national certification obtained through education and examination;

(15) "Radiologic technology" is the science of using a radioactive substance or medical equipment emitting or detecting ionizing radiation of humans for diagnostic or therapeutic purposes; and

(16) "Temporary license" means a certificate issued by the Medical Ionizing Radiation Licensure Committee authorizing the applicant to use radioactive materials or medical equipment emitting or detecting ionizing radiation for human diagnostic or therapeutic purposes when licensure or relicensure is pending before the committee and when the issuance may be justified by special circumstances as determined by the committee.

History. Acts 1999, No. 1071, § 3; **Amendments.** The 2019 amendment 2003, No. 1395, §§ 1-3; 2019, No. 386, repealed former (1), (2), and (4). §§ 62, 63.

17-106-104. Medical Ionizing Radiation Licensure Committee.

(a)(1) The Medical Ionizing Radiation Licensure Committee shall be an advisory committee to the State Board of Health and shall consist of ten (10) members, as follows:

(A) Nine (9) members to be appointed by the Governor; and

(B) One (1) member shall be the Secretary of the Department of Health or his or her designee.

(2) The nine (9) members appointed by the Governor shall be residents of the State of Arkansas and shall have been employed in their fields for five (5) years preceding their appointment.

(3) Among the committee members shall be two (2) radiologic technologists, one (1) nuclear medicine technologist, one (1) radiation therapist, two (2) radiation practitioners, one (1) licensed practitioner, one (1) radiation health/medical physicist, and one (1) consumer. The radiologic technologists appointed to the committee must be eligible for licensure under this chapter.

(b) The members shall be appointed for three-year staggered terms to be assigned by lot. Committee members shall serve until replaced. The terms shall commence on July 15 of each year. Committee members are limited to serving two (2) consecutive terms. In the event of a vacancy on the committee for any reason, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor.

(c) Members of the committee shall not be entitled to compensation for their services but may receive expense reimbursement in accordance with § 25-16-902, to be paid by the Department of Health.

(d) The consumer member appointed to the committee shall have no association or relationship with a licensed practitioner, radiologic

technologist, licensed technologist, or limited licensed technologist which would prevent or in any way hinder the consumer in representing the interest of the public.

(e) Within ninety (90) days of appointment, the committee shall hold a meeting and elect from its membership a chair for a term set by the committee. The secretary of the committee shall be the Secretary of the Department of Health or his or her designee.

(f) The committee shall meet at least quarterly.

(g) Special meetings of the committee may be called at any time at the pleasure of the board or pursuant to the bylaws of the committee.

(h) A majority of the members of the committee shall constitute a quorum. No action may be taken by the board except by affirmative vote of the majority of those present.

History. Acts 1999, No. 1071, § 4; substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a)(1)(B).

Amendments. The 2019 amendment of Health" in (a)(1)(B).

17-106-105. Duties and powers.

(a)(1) The State Board of Health is authorized to:

(A)(i) Incur whatever expenses the board may deem necessary or expedient in performing the board's duties under the provisions of this chapter.

(ii) The board, pursuant to the administration of the Department of Health, may employ or engage whatever personnel, legal counsel, independent contractors, or assistants it may deem necessary or expedient and fix their compensation;

(B) Adopt standards for applicants wishing to take the licensing examination;

(C) Recognize and license emerging modalities in radiological procedures; and

(D) Adopt, publish, and from time to time revise such rules not inconsistent with the law as may be necessary to enable it to carry into effect the provisions of this chapter.

(2)(A)(i) All fees shall be established by the board.

(ii) The licensing fee shall not be more than seventy-five dollars (\$75.00) and shall be an amount reasonably calculated to cover the costs of issuing the license to practice and otherwise administer this chapter.

(iii) The examination fee shall be an amount reasonably calculated to cover the costs of the examination and otherwise administer this chapter.

(iv) In addition, the board will determine the late fee.

(v) All such fees shall be used only for the purposes authorized in this chapter.

(B) Any money not used by the department to administer the licensing program within a fiscal year shall be carried forward into the next fiscal year.

(b) The Medical Ionizing Radiation Licensure Committee is authorized to:

(1) Adopt suitable bylaws for carrying out its duties under the provisions of this chapter;

(2) Have an official seal that shall bear the words "Medical Ionizing Radiation Licensure Committee";

(3)(A) Provide a secretary's certificate.

(B) The certificate of the Secretary of the Medical Ionizing Radiation Licensure Committee under seal shall be accepted in the courts of the state as the best evidence as to the minutes of the committee and shall likewise be accepted in the courts of the state as the best evidence as to the licensure or nonlicensure of any person under the requirements of this chapter;

(4) Keep a record of all its proceedings, receipts, and disbursements;

(5) Recommend to the board standards for applicants wishing to take the licensing examination and conduct examinations or contract with persons or entities to conduct examinations of applicants;

(6) Grant, deny, renew, suspend, or revoke licenses for any cause stated in this chapter; and

(7) Conduct disciplinary proceedings as provided in this chapter.

(c)(1) In the performance of its duties, the committee is empowered to administer oaths and take testimony on any matters within the committee's jurisdiction and issue subpoenas and thereby compel the attendance of persons before it for the purpose of examining any facts or conditions properly pending before the committee.

(2) All subpoenas issued by the committee shall be served in the manner prescribed by law for the service of subpoenas issuing from the courts, and all persons so served shall obey the subpoenas or be subject to the penalties provided by law for the disobedience of subpoenas issuing from the courts.

History. Acts 1999, No. 1071, § 5; 2003, No. 1395, §§ 4, 5; 2019, No. 315, § 1675; 2019, No. 910, § 4913.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a)(1)(D).

The 2019 amendment by No. 910, in (a)(1)(A), substituted "the board may

deem" for "it may deem" and substituted "the board's duties" for "its duties" in (i), and substituted "The board, pursuant to the administration of the Department of Health, may employ" for "It may employ" in (ii).

17-106-107. Licensing requirements.

(a) The Medical Ionizing Radiation Licensure Committee shall license any applicant who shall:

(1) Make application and pay a nonrefundable fee established by the State Board of Health; and

(2) Submit satisfactory evidence verified by oath or affirmation that the applicant:

(A) Is qualified to administer radioactive materials or operate medical equipment emitting or detecting ionizing radiation upon human beings;

(B) Is at least eighteen (18) years of age at the time of application; and

(C) Has been awarded a high school diploma or has passed the General Educational Development Test or the equivalent.

(b) In addition to the requirements of subsection (a) of this section, any person seeking to obtain a license in a specific area of radiologic technology must comply with the following requirements:

(1) Each applicant for a license as a radiologic technologist, radiation therapist, or nuclear medicine technologist shall have satisfactorily completed an approved course of study in radiography, radiation therapy, or nuclear medicine, respectively, that is accredited by the Joint Review Committee on Education in Radiologic Technology, Joint Review Committee on Educational Programs in Nuclear Medicine Technology, or regional or national accreditation as deemed acceptable by the board; and

(2) The curriculum for each course of study shall follow the standards approved by the United States Department of Education, provided that the standards do not conflict with board policies.

(c) The board shall establish criteria and standards within the state for educational programs in radiologic technology, which are not covered under §§ 6-51-601 — 6-51-617, and recognize these programs upon finding that the criteria and standards have been met.

(d) Notwithstanding the provisions of this section previously set forth, for a period not to exceed one (1) year after July 30, 1999, upon application and the payment of the fee equivalent of that required for the written examination and initial licensing fee, the board shall issue a license without examination to any person currently employed as a person using radioactive materials or medical equipment emitting and detecting ionizing radiation on a human being.

(e) Licensees shall submit proof of having successfully completed at least six (6) hours of continuing medical education annually for license renewal. Continuing education may be provided by the licensed practitioner or a hospital in-service education department according to the rules prescribed by the board.

History. Acts 1999, No. 1071, § 7; 2003, No. 1395, § 8; 2007, No. 827, § 141; 2019, No. 315, § 1676; 2019, No. 990, § 132.

Amendments. The 2019 amendment by No. 315 deleted “and regulations” fol-

lowing “rules” in the second sentence of (e).

The 2019 amendment by No. 990 deleted former (a)(2)(B) and redesignated the remaining subdivisions accordingly.

17-106-108. Examinations.

(a) With the exception of those who are grandfathered under this chapter, each applicant for licensure shall be required to pass a license

examination designated and approved by the State Board of Health. Standards for acceptable performance shall be established.

(b) The State Board of Health shall identify acceptable examinations such as those administered by the American Registry of Radiologic Technologists, the American Chiropractic Registry of Radiologic Technologists, or the Nuclear Medicine Technology Certification Board.

(c) An applicant who fails to pass the examination may reapply for the examination if the applicant complies with the rule established by the State Board of Health.

(d) The State Board of Health may accept a current certificate issued by the American Registry of Radiologic Technologists, the American Society for Clinical Pathology, the American Chiropractic Registry of Radiologic Technologists, Cardiovascular Credentialing International, or the Nuclear Medicine Technology Certification Board issued on the basis of an examination satisfactory to the State Board of Health if the standards of those bodies are at least as stringent as those established by the State Board of Health.

(e) The State Board of Health may accept a current certificate, registration, or license as a radiologic technologist issued by another state if the standards in the other state are at least as stringent as those established by the State Board of Health.

(f)(1) The State Board of Health shall identify acceptable examinations appropriate to the discipline for the limited licensed technologist.

(2) A study guide containing information to be included on the examination will be provided to the applicant for the examination.

History. Acts 1999, No. 1071, § 8; **Amendments.** The 2019 amendment 2003, No. 1395, § 9; 2019, No. 315, substituted “rule” for “regulation” in (c). § 1677.

17-106-109. Licenses.

(a) The Medical Ionizing Radiation Licensure Committee may issue a license to each applicant who has either successfully passed the examination or qualified under § 17-106-107(d) and (e) and has paid the prescribed fees.

(b)(1) At its discretion, the committee may issue a temporary license to any person whose licensure or relicensure may be pending and when issuance may be justified by special circumstances.

(2) A temporary license shall be issued only if the committee finds that it will not violate the purpose of this chapter or endanger the public health and safety.

(3) A temporary license shall not remain in force longer than one hundred eighty (180) days.

(4) Unless an individual demonstrates to the committee a hardship or a continual progression in fulfilling the educational and certification requirements of a modality recognized by the State Board of Health, no more than two (2) temporary licenses shall be issued to any individual within a specific category.

(c) Holders of a license under this chapter shall display the official license document or a notarized copy in each place of employment, and the document shall be made available upon request.

(d)(1) A license shall be renewed by the committee for a period of one (1) year upon payment of renewal fees in an amount established by the board.

(2) As a prerequisite for renewal, continuing education requirements shall be set by rule.

(e)(1)(A) Any person licensed under this chapter whose license has lapsed and who has ceased activities as a licensee for less than five (5) years may apply for relicensure upon payment of a fee set by the board.

(B) For periods of more than five (5) years, licensure shall be in a manner as designated by the board.

(C) Continuing education requirements shall be set by rule.

(2) This subsection shall not apply to anyone whose license has been revoked or suspended.

History. Acts 1999, No. 1071, § 9; 2003, No. 1395, § 10; 2019, No. 315, §§ 1678, 1679.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (d)(2) and (e)(1)(c).

17-106-110. Discipline.

(a) Any license issued by the Medical Ionizing Radiation Licensure Committee may be suspended or revoked or the individual may be censured, reprimanded, or otherwise sanctioned by the committee in accordance with the provisions and procedures of this chapter if after due process it is found that the individual:

(1) Is guilty of fraud or deceit in the procurement or holding of the license;

(2) Has been convicted of a felony listed under § 17-3-102;

(3) Is or has been afflicted with any medical problem, disability, or addiction that in the opinion of the State Board of Health would impair professional competence;

(4) Has knowingly aided and abetted a person who is not a radiologic technologist or otherwise authorized by § 17-106-111(b) to perform the duties of a license holder under this chapter;

(5) Has undertaken or engaged in any practice beyond the scope of duties permitted a license holder under this chapter;

(6) Has impersonated a license holder or former license holder or is performing the duties of a radiologic technologist, licensed technologist, or limited licensed technologist under an assumed name;

(7) Has been found guilty of violations of a code of ethics that the board shall establish by rule;

(8) Has applied ionizing radiation without the prescription of a licensed practitioner;

(9) Has interpreted a diagnostic image for a fee;

(10) Is or has been found guilty of incompetence or negligence in his or her performances as a license holder; or

(11) Has failed to comply with any provision of this chapter or any of the rules pertaining to this chapter.

(b)(1)(A) Proceedings against the holder of a license under this chapter shall be instituted by filing a written charge or charges with the committee.

(B) The charge or charges may be brought by a person, corporation, association, public officer, or the board.

(2)(A) The Chair of the Medical Ionizing Radiation Licensure Committee shall appoint a subcommittee of three (3) committee members to examine the charge or charges and prepare a written recommendation to the committee stating whether the charge or charges should be dismissed or brought against the licensee.

(B) If the committee determines that the charge or charges contain sufficient merit, the chair shall set a time and place for a hearing.

(C) A copy of the charge or charges, together with the notice of the time and place of the hearing, shall be served on the person charged either in person or by registered mail at least thirty (30) days before the date set for the hearing.

(D) The accused shall have the right to appear at the hearing with counsel, to answer the charge or charges, cross examine witnesses, and produce evidence and witnesses in his or her defense.

(E) The committee shall have the power to issue subpoenas for the appearance of witnesses and take testimony under oath.

(c) Any licensee who violates any provision of this chapter or any rule or order made pursuant to this chapter shall be subject to a cease and desist order and a fine of not more than one thousand dollars (\$1,000) per incident.

(d) All hearings and appeals from hearings to the board under this chapter shall be pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1999, No. 1071, § 10; 2003, No. 1395, §§ 11, 12; 2019, No. 315, §§ 1680, 1681; 2019, No. 990, § 133.

Amendments. The 2019 amendment by No. 315 substituted “rule” for “regulation” in (a)(7); and deleted “or regulations” following “rules” in (a)(11).

The 2019 amendment by No. 990 substituted “listed under § 17-3-102” for “in a

court of competent jurisdiction either within or outside of this state unless the conviction has been reversed and the holder of the license has been discharged or acquitted or if the holder has been pardoned with full restoration of civil rights, in which case the license shall be restored” in (a)(2).

CHAPTER 107

ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

SUBCHAPTER.

2. ARKANSAS ORTHOTICS, PROSTHETICS, AND PEDORTHICS ADVISORY BOARD.

3. LICENSING.

SUBCHAPTER 2 — ARKANSAS ORTHOTICS, PROSTHETICS, AND PEDORTHICS ADVISORY BOARD

SECTION.

17-107-202. Organization and proceedings.

Effective Dates. Acts 2019, No. 910, § 6346(b); July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and

classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

17-107-202. Organization and proceedings.

(a)(1) Within thirty (30) days after the initial appointment of the members of the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board, the Governor shall call the first meeting of the board for the purpose of organization.

(2) The board shall elect a chair and vice chair at its first regularly scheduled meeting of each calendar year.

(3) The board shall meet as frequently as it deems necessary, at such times and places as the board designates. Additional meetings may be held upon call of the Chair of the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board or upon written request of four (4) members.

(b) A quorum of the board shall consist of four (4) members.

(c) The members of the board shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq. However, the expenses shall in no case exceed funds available to the board.

(d) All proceedings of the board shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) The Department of Health shall provide staff support for the board.

History. Acts 2007, No. 174, § 1; 2019, No. 910, § 4914.

Amendments. The 2019 amendment substituted "The Department of Health"

for "The Division of Medical Services of the Department of Human Services" in (e).

SUBCHAPTER 3 — LICENSING**SECTION.**

17-107-304. Orthotic assistants, orthotic/prosthetic assistants, and prosthetic assistants.

SECTION.

17-107-310. Disciplinary action.

17-107-304. Orthotic assistants, orthotic/prosthetic assistants, and prosthetic assistants.

An applicant for certification to practice as an orthotic assistant, an orthotic/prosthetic assistant, or a prosthetic assistant shall submit to the Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board written evidence verified by oath that the applicant either:

(1) Meets the following requirements:

(A) Possesses a high school diploma or comparable credential approved by the board;

(B) Has a minimum of:

(i) Three (3) years of experience in the field in which the individual is seeking licensure as an assistant; or

(ii) Two (2) years of experience in the field in which the individual is seeking licensure as an assistant and has a minimum of three (3) semester hours of higher education in the subjects of human anatomy and physiology and medical terminology; and

(C) Has written documentation from a prosthetist or an orthotist that the applicant is qualified to perform as an assistant in the field in which the individual is seeking licensure as an assistant; or

(2)(A) Has graduated from a master's level orthotic, prosthetic, or orthotic/prosthetic educational program approved by the National Commission on Orthotic and Prosthetic Education and is in a residency program.

(B) An orthotic assistant, an orthotic/prosthetic assistant, or a prosthetic assistant certified under subdivision (2)(A) of this section shall maintain certification until he or she completes the residency program.

History. Acts 2007, No. 174, § 1; 2009, No. 200, § 1; 2021, No. 445, § 1.

Amendments. The 2021 amendment rewrote the section.

17-107-310. Disciplinary action.

The Arkansas Orthotics, Prosthetics, and Pedorthics Advisory Board may deny, suspend, revoke, or restrict any license or certification issued under this chapter or otherwise discipline an individual licensed or certified under this chapter upon proof that the individual:

(1) Has pleaded guilty or nolo contendere to or has been found guilty of a felony listed under § 17-3-102;

(2) Has used intoxicating liquors, narcotics, controlled substances, or other drugs in a manner that adversely affects the license or certificate holder's ability to practice;

(3) Has become physically or mentally incompetent to practice to the extent that the license or certificate holder's professional competence is impaired and the public is endangered;

(4) Has committed fraud or deceit in the procuring or attempting to procure a license or certification under this chapter;

(5) Has aided or abetted an unlicensed or uncertified individual to perform the duties of a license or certificate holder under this chapter;

(6) Has engaged in any practice beyond the scope of duties permitted a license or certificate holder under this chapter;

(7) Is incompetent or grossly negligent in his or her performance as a license or certification holder;

(8) Has engaged in unprofessional or unethical conduct;

(9) Has advertised in a false, fraudulent, deceptive, or misleading manner;

(10) Has knowingly betrayed a professional secret;

(11) Has violated a rule of the board;

(12) Has violated a term of probation or an order previously imposed by the board; or

(13) Has had a license, certificate, or registration revoked or suspended or has been placed on probation or under disciplinary order in any jurisdiction.

History. Acts 2007, No. 174, § 1; 2019, No. 315, § 1682; 2019, No. 990, § 134.

The 2019 amendment by No. 990 added "listed under § 17-3-102" in (1).

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (11).

